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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 10 AND 178

(T.D. 01–01)

REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL PRODUCTS

RIN 1515–AC79

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the proposed amendments to the Customs Regulations that provide for the refund of duties paid on imports of certain wool products. This document implements the provisions of section 505 of Title V of the Trade and Development Act of 2000, whereby U.S. manufacturers of certain wool articles are eligible to claim a limited refund of duties paid in each of calendar years 2000, 2001, and 2002 on imports of select wool products. The maximum amount eligible to be refunded in each of these claim years is limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. This document adds to the Customs Regulations the eligibility, documentation and procedural requirements necessary to substantiate a wool duty refund claim, and makes conforming changes to other regulatory provisions that are impacted by these requirements.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927-1082.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 ("the Act"), Public Law 106-200, 114 Stat.

251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On October 26, 2000, Customs published a document in the **Federal Register** (65 FR 64178) that proposed to amend the Customs Regulations to provide for the refund of duties paid on imports of certain wool products, as authorized by section 505 of Title V of the Act. In that document, Customs explained the eligibility, documentation and procedural requirements necessary to file and substantiate a wool duty refund claim. On November 6, 2000, a document was published in the **Federal Register** (65 FR 66589) that corrected several typographical errors in the proposed rulemaking.

The proposed rulemaking was intended to implement the terms of section 505 in new § 10.184 of the Customs Regulations. The proposed rules set forth the eligibility, documentation and procedural requirements necessary for a claimant to establish the amount of duties paid on eligible wool products in calendar year 1999, and to substantiate a claim for a duty refund in the years 2000, 2001 and 2002, pursuant to the terms of the statute.

Wool Duty Refunds Authorized by Section 505

Section 505 authorizes duty refunds on certain worsted wool fabrics, wool yarn and wool fiber and wool top. The wool duty refunds authorized by section 505 were set forth in § 10.184(c) of the proposed regulations.

Letter of Intent to File a Wool Duty Refund Claim

As section 505 limits the amount of duties that may be refunded to a claimant in each of calendar years 2000, 2001, and 2002 to an amount not to exceed one-third of the amount of duties paid on eligible wool products in calendar year 1999, Customs proposed that an eligible manufacturer that anticipates seeking a section 505 duty refund in calendar years 2000, 2001, and 2002, must file with Customs a letter of intent to that effect, along with documentation that substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. The procedural and documentation requirements for filing a letter of intent were set forth in § 10.184(d) of the proposed regulations.

Customs Verification Letter

Section 10.184(e) of the proposed rulemaking provided that Customs would issue a wool duty refund verification letter to each prospective claimant that timely and completely substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

Procedures for Filing a Wool Duty Refund Claim

The proposed rulemaking, at § 10.184(g), identified two classes of claimants that may file a wool duty refund claim: manufacturers who are the importers of eligible wool merchandise and manufacturers who are not the importers of worsted wool fabric. For both types of manufacturers, it was proposed that an eligible claimant be permitted to submit to Customs a request for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002. The proposed rulemaking stated that all duty refund claims must be substantiated by relevant entry summary information and, in the case of non-importing manufacturers, the entry summary information may be submitted to Customs by the manufacturer or the importer.

DISCUSSION OF COMMENTS

Sixteen comments from the public were received in response to the publication of the notice of proposed rulemaking. A description of the comments, together with Customs analysis thereof, is set forth below.

Comment:

Filing a Letter of Intent or Claim Where the Manufacturer is Both an Importer of Worsted Wool Fabric and a Purchaser of Such Fabric in a Single Claim Year

The proposed regulations identify three types of claimants who can file a letter of intent for purposes of claiming a wool duty refund: eligible manufacturers who import eligible wool merchandise; eligible manufacturers who do not import worsted wool fabric, but who possess the relevant entry summary numbers for the imported fabric; and eligible manufacturers who do not import worsted wool fabric, and who do not possess the relevant entry summary information. The documentation these manufacturers must submit to substantiate their letters of intent was described in proposed § 10.184(d)(1), (d)(2) and (d)(3). Several commenters state that the proposed regulations suggest that a claimant can only be described by one of the three types of claimant categories, and accordingly is limited to filing one letter of intent under either proposed paragraph (d)(1), (d)(2) or (d)(3). One of these commenters suggests that as an eligible manufacturer may have been both an importer and a purchaser of eligible wool fabric in calendar year 1999, the final regulations should permit such a manufacturer to be able to file a letter of intent, with appropriate substantiating information, under any combination of proposed § 10.184(d)(1), (d)(2) and (d)(3). To this end, this commenter suggests that the final regulations should either require more than one letter of intent for such a manufacturer or, preferably, that a single letter of intent may be filed that identifies the specific classes under which an eligible manufacturer is filing, together with the attachments/affidavits required for each class of manufacturer.

Several commenters raise the same issue regarding the procedures for filing a wool duty refund claim, as set forth in proposed § 10.184(g)(3)(i) through (g)(3)(vi). They note that as a manufacturer may be both an importer of eligible wool fabric and a purchaser of such imported fabric, the final regulations should permit a manufacturer to be able to file a single claim pursuant to the documentation requirements for both categorizations.

On a related note, several commenters state that there may be instances where a non-importing manufacturer purchases worsted wool fabric from more than one importer/supplier, and some importers are willing to provide the manufacturer with the relevant entry summary information and some are only willing to provide such information directly to Customs. In these instances, these commenters suggest that the final regulations should permit a manufacturer, both for purposes of filing a letter of intent and for filing a duty refund claim, to be able to submit relevant entry summary information directly to Customs and to have such information submitted to Customs by the importer/supplier.

Customs Response:

Customs agrees that the proposed regulations did not expressly state that a manufacturer may file a letter of intent under any combination of § 10.184(d)(1), (d)(2) and (d)(3). As it was Customs intent to permit this, the final regulations provide the documentation requirements for filing a letter of intent where the manufacturer is described by two or more of paragraphs (d)(1), (d)(2) or (d)(3) of this section. This is set forth in § 10.184(d)(4). Additionally, § 10.184(g)(3)(vii) is added to the final regulations to reflect the fact that, for purposes of filing a claim, a manufacturer may be both an importer of worsted wool fabric and a purchaser of such fabric in the same claim year. The final regulations also permit, at § 10.184(d)(2)(i)(D), (d)(2)(ii), (g)(3)(iii) and (g)(3)(iv), a non-importing manufacturer to be able to submit relevant entry summary numbers directly to Customs, and to have such entry information submitted directly to Customs by the importer(s), all in conjunction with a single claim.

Comment:

Changes to proposed § 10.184(d)(2)(i)(D) and § 10.184(d)(2)(ii) and (d)(3)(ii)

One commenter suggests two clarifying changes to § 10.184(d). First, it is suggested that proposed § 10.184(d)(2)(i)(D)(*5*) and (D)(*6*) be redesignated in the final regulations as (d)(2)(i)(D)(*5a*) and (d)(2)(i)(D)(*5b*), respectively, so as to correlate to the itemization in the related affidavit set forth at proposed § 10.184(d)(2)(ii). Second, the commenter suggests that the heading text of the affidavits set forth at proposed § 10.184(d)(2)(ii) and (d)(3)(ii) be amended to include the following description in the parenthetical reference: "... for the fabric identified in the invoices submitted with this affidavit)".

Customs Response:

The final regulations reflect, at § 10.184(d)(2)(ii) and (d)(3)(ii), the amended affidavit heading text suggested by the commenter. Customs will not redesignate § 10.184(d)(2)(i)(D)(*5*) and (d)(2)(i)(D)(*6*), in that the drafting rules prescribed by the **Federal Register** do not permit the change as suggested.

Comment:

Place to file a letter of intent

One commenter notes that the proposed regulations did not specify where a letter of intent and related documentation should be filed.

Customs Response:

Customs recognizes the omission. The final regulations create a new § 10.184(d)(7) that sets forth the place where a letter of intent must be filed.

Comment:

Issuance of Verification Letters

Several commenters request clarification of the time within which Customs will send written verification letters to prospective claimants. Proposed § 10.184(e) provided that Customs will issue a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a completed letter of intent. The commenters note that Customs may not have the information it needs within 30 days of receiving a prospective claimant's letter of intent that relies on invoices to substantiate the amount of duties paid in calendar year 1999, and therefore will either have to file an amended verification letter at a later date or wait until 30 calendar days from the close of the filing date for letters of intent.

Customs Response:

Customs agrees that the date by which Customs will issue a verification letter requires clarification. The proposed rule stated that, in all cases, Customs will issue a verification letter within 30 calendar days of receiving a prospective claimant's letter of intent. The verification letter sets forth the amount of wool duty refund the prospective claimant is eligible to receive and, where invoices were used to substantiate the amount claimed in the letter of intent, the percentage deducted from the invoice amounts with an accompanying explanation.

Where invoices are used to substantiate a letter of intent, Customs must wait until it has received all such letters of intent because the agency will need to compare the aggregate amount of duties being claimed for each importer, as evidenced by invoices, with the amount actually paid by each importer, as evidenced by the Automated Com-

mercial System (ACS). In other words, in situations where invoices are used to substantiate a letter of intent, Customs will not be able to ascertain the percentage to be deducted from each invoice amount, and consequently determine the maximum refund amount that a prospective claimant is eligible to claim, until it has received all letters of intent that rely on invoices. Customs will have to receive all letters of intent that rely on invoices in order to calculate the aggregate amount of duties attributable to each importer and compare this amount with the amount paid by each importer as indicated by ACS. As a result, it will not be possible for Customs to issue a verification letter within 30 calendar days after receiving a prospective claimant's letter of intent that relies on invoices, in that Customs will not have the necessary information to determine the amount to deduct from each invoice amount. Accordingly, this final rule reflects that Customs will issue a verification letter in response to a letter of intent that uses invoices, in whole or in part, to substantiate the amount of duties paid in calendar year 1999 within 30 days from the closing date for filing letters of intent. It is further noted, that this document extends the date, as proposed, by which Customs must receive all letters of intent. See discussion below. The time frame within which Customs will issue a verification letter in response to a letter of intent that is substantiated solely by entry summary information remains unchanged from the terms set forth in the proposed rulemaking (*i.e.*, 30 calendar days from the date Customs receives the letter of intent).

Comment:

Extension of Time to File a Letter of Intent

Two commenters suggest that Customs extend the time period to submit a letter of intent so as to allow prospective claimants adequate time to collect the requisite information.

Customs Response:

Customs agrees. The final regulations provide in § 10.184(d)(4) that a manufacturer's letter of intent must be received by Customs no later than March 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

Comment:

A Claimant May File Only One Wool Duty Refund Claim, and Amended Claims Where Applicable, for Each Claim Year

Proposed § 10.184(g)(1) stated that a claimant may submit to Customs, once per calendar year, a request for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002. Several commenters note that this time limitation seemingly precludes a claimant from filing two separate wool duty refund claims for two different claim years in the same calendar year. The

commenters suggest that the regulations should provide that a claimant may file only one wool duty refund claim for each claim year; however, refund claims for two different claim years may be filed within the same calendar year.

Customs Response:

It was Customs intent to permit a claimant to file more than one refund claim in a given calendar year, so long as the refund claims were for different claim years. Customs agrees with the commenters that the proposed language seemingly precluded this. Therefore, this final rule provides at § 10.184(g)(1) that a claimant may file one claim for a wool duty refund for each of claim years 2000, 2001, and 2002, including, where applicable, any related amended claims for such claim year. There is no prohibition against a claimant filing two separate claims in a single calendar year, so long as the claims are for two different claim years.

Comment:

Time to File a Wool Duty Refund Claim and Amended Claims

Several commenters request that Customs extend the deadlines for filing wool duty refund claims and amended claims, and clarify the meaning of the term "defective claim". Proposed § 10.184(g)(1) provided that all claims for a wool duty refund, whether original or amended, must be received by Customs within 90 calendar days from the last day of the calendar year for which a wool duty refund is being sought. The proposed rule provided that a claim may be amended within 30 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support a duty refund claim or is otherwise defective, within 30 calendar days from the date of the Customs notification. The commenters suggest extending these deadlines so that a claim may be filed by December 31 of the year following the claim year for which a wool duty refund is being sought, and that a claim may be amended within 90 calendar days from the date of the original submission or December 31, whichever date is sooner. The commenters suggest that the time period to file an amended claim in response to a Customs notice of insufficient or defective claim be extended to 90 calendar days from the date of such notice, without the imposition of the December 31 deadline, described above, that is applicable to all other claims and amended claims. Lastly, the commenters suggest that the term "defective claim" include a claim that identifies one or more entry summaries that are not available for a refund.

Customs Response:

Customs agrees with the comments. Accordingly, in this final regulation Customs is extending the deadlines set forth in proposed § 10.184(g)(1) for filing a wool duty refund claim and related amend-

ments. The final regulations state, at § 10.184(g)(1), that should Customs notify a claimant in writing that the claim is insufficient to support a duty refund claim or is otherwise defective, Customs must receive the claimant's subsequent amended claim or claims within 90 calendar days from the date of such notification. Regarding the term "defective claim," Customs is providing in a parenthetical reference provided at § 10.184(g)(1) that an example of a defective claim is a claim that relies on any entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j). In order to facilitate the administrative processing of wool duty refund claims, the final regulations provide at § 10.184(h) that no duty refund will be issued to a claimant until the applicable amendment period has expired or unless the claimant has provided Customs with a signed waiver of amendment.

Comment:

No Interest Payable in Wool Duty Refunds

Several commenters note that the proposed regulation does not describe the circumstances when interest may be payable on wool duty refunds.

Customs Response:

Customs will not pay interest on wool duty refund claims. The United States Supreme Court, in *Library of Congress v. Shaw*, 478 U.S. 310, 106 S. Ct. 2957 (1986), held that interest cannot be recovered in a suit against the Federal Government in the absence of an express waiver of sovereign immunity, by specific contractual or statutory provision or by express consent by Congress. Section 505 does not expressly waive the government's sovereign immunity from an award of interest. Moreover, there can be no such waiver "by implication or by use of ambiguous language," as held by the Supreme Court in *United States v. N.Y. Rayon Importing Co.*, 329 U.S., at 659. The statute that authorizes Customs to pay interest on certain duties and fees is codified at 19 U.S.C. 1505. It specifically refers to payments of interest on "excess moneys deposited" which shall accrue through the "date of liquidation or reliquidation of the applicable entry or reconciliation." 19 U.S.C. 1505(c). Customs payment of claims for refunds under these regulations is not a payment of excess moneys deposited, nor is it triggered by the liquidation of an entry or reconciliation. Rather, these claims are analogous to claims for drawback. Just as no interest is paid on drawback claims, so no interest will be paid on these claims. After Customs has verified that the entry summaries associated with the claim have finally liquidated and the period for amending the claim has expired or the claimant has expressly waived the right to amend the claim, Customs will issue a courtesy notice informing the claimant that the payment will be forthcoming. No notice of liquidation or reliquidation will be posted regarding the claim.

Comment:

Definition of the term "Supplier"

Several commenters suggest that Customs define the term "supplier" to mean the entity who is not the importer that sold the fabric directly to the manufacturer.

Customs Response:

Customs agrees with the commenters' view that the term "supplier," in the context of these regulations, means an entity who is not the importer that sells fabric directly to the manufacturer. We do not think it is necessary to formally define this term in the final regulation. Customs believes that the meaning of the term "supplier," as intended by Customs and suggested by the commenters, is clear from the context in which it appears in the regulations (*i.e.*, the claimant purchased imported worsted wool fabric "from an identified importer or from an identified supplier").

Comment:

Definition of the term "Manufacturer"

Several commenters state that the term "manufacturer" should be clarified so as to describe who is eligible to claim a wool duty refund under the terms of these regulations. To that end, the commenters note that some manufacturers are producers of eligible products (*i.e.*, custom tailors), some are subsidiaries of larger companies or purchasers of eligible wool products from related companies, and some manufacturers acquire other manufacturers or undergo reorganizations that result in an assignation of legal interests..

Customs Response:

Customs is of the view that it is not feasible to attempt to identify in the final regulations each business relationship or transaction that may affect the eligibility of a manufacturer to claim a refund, have another party file a letter of intent or refund claim on the manufacturer's behalf, or assign a successor-in-interest to an existing wool duty refund claim, etc. Customs will decide whether such situations affect the right to file a wool duty refund claim on a case by case basis. Any questions in this regard should be submitted to Customs as an attachment to a letter of intent or wool duty refund claim. Regarding the more specific questions of whether a custom tailor is an eligible claimant for purposes of the wool duty refund program and whether the legal assignee of an eligible manufacturer may exercise the assignor's claim rights, Customs notes the following. Customs is of the view that so long as a custom tailor manufactures men's or boys' suits, suit-type jackets or trousers, of imported worsted wool, the tailor is described by the terms set forth in § 10.184(c)(1) and there is no need to include any clarification in regard to this class of

manufacturer. The final regulations reflect, however, in § 10.184(f)(7), that an eligible claimant may be the legal assignee, as established to Customs satisfaction, of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of § 10.184. The final regulations also set forth, at new paragraphs (d)(5) and (g)(viii), the documentation that a legal assignee of a manufacturer's wool duty refund claim rights must provide to Customs for purposes of filing a letter of intent and a refund claim.

Comment:

Confidentiality

One commenter expresses concern with respect to confidential treatment of certain commercial information. Specifically, the commenter notes that as proposed § 10.184(e) provided that a verification letter issued to a prospective claimant will contain the ACS-generated amount of duties paid by a specific importer in calendar year 1999, the prospective claimant will be advised of the amount of duty paid by each of their importers or suppliers. The commenter is of the view that a prospective claimant will be able to calculate from this information the prices paid for imported fabric and the mark-up cost. The commenter, citing section 645 of the Trade Secrets Act (18 U.S.C. 1905) posits that release of this information may violate the prohibition against release of confidential information by government officials.

Customs Response:

In response to the concern expressed by the commenter, Customs is deleting reference in the verification letter to the ACS-generated amount of duties paid by a specific importer in calendar year 1999. Section 10.184(e) of the final regulations reflects this approach.

Comment:

Use of Invoices to Substantiate Wool Duty Refund Claims

One commenter questions why the proposed regulations permit a manufacturer to substantiate a letter of intent by providing Customs with invoices for worsted wool fabric imported in calendar year 1999, but requires entry summary information to substantiate a wool duty refund claim.

Customs Response:

Section 505(d) requires that "any person applying for a rebate under this section shall properly identify and make appropriate claim to the United States Customs Service for each entry involved." For this reason, the final regulations implementing the statute require a claimant to identify to Customs the entry summaries that provide the basis for a wool duty refund claim. Invoices do not provide the requisite infor-

mation to substantiate a wool duty refund as mandated by section 505.
Comment:

Retroactive Substitution of Entry Summary Numbers for Purposes of Drawback Claims

One commenter notes that where an importer provides entry summary numbers to its customers or directly to Customs for purposes of substantiating a wool duty refund claim, and the importer later learns that a drawback claim is available on one or more of those entry summaries, the drawback claim is invalid. The commenter suggests that in this situation the importer be allowed to replace the entry summaries identified to Customs to substantiate a wool duty refund claim with other comparable entry summaries, so long as the amount of duty paid in connection with the replacement entries is not less than the duty paid on the original entry.

Customs Response:

First, it is important to recognize that in the situation posited by the commenter, the importer's drawback claim may not necessarily be forfeited. As set forth in § 10.184(j)(3) of the proposed regulations, if an entry has been used to provide the basis for a duty refund claim pursuant to section 505, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback that is based on that entry will be denied by Customs. If an entry has been used to substantiate a claim for a section 505 duty refund, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for drawback. An entry that has already had 99% of the duties paid on that entry refunded by way of a drawback claim may not be used to provide the basis for a wool duty refund claim. Based on the foregoing, the crucial determination as to whether an importer can replace an entry summary that has already been identified to Customs for purposes of substantiating a claim with another entry summary that has had a comparable amount of duties paid in connection with that entry is whether the wool duty refund claim has been processed yet. If so, and the entire amount of duties paid on that entry was refunded to the claimant, no substitution of entry summaries will be permitted, and a claim for drawback that is based on that entry will be denied by Customs. If, however, the section 505 claim has not yet been processed, § 10.184(j)(3) of the final regulations will permit an importer to replace or substitute an entry summary pursuant to the terms discussed above.

Comment:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent

One commenter inquires whether an importer's affidavit in support of a non-importing manufacturer's letter of intent, set forth in proposed § 10.184(d)(2)(iv), covers a single manufacturer.

Customs Response:

Each importer's affidavit in support of a non-importing manufacturer's letter of intent applies only to the specific manufacturer or supplier(s) identified in the affidavit.

Comment:

Request that Importers be Permitted to File on Behalf of Manufacturers

One commenter requests that importers be permitted to file wool duty refund claims on behalf of smaller manufacturers.

Customs Response:

For administrative and legal purposes, Customs considers it important that a manufacturer file a claim on its own behalf, in that the manufacturer, or a knowledgeable authorized officer or employee of the manufacturer, is required to provide a statement to Customs attesting to the truth and accuracy of the submitted information.

Comment:

Allocation of Fabric Prices by an Importer

One commenter notes that as some manufacturers purchase fabric at different prices from different sources at different times of the year, it may not be possible for an importer to determine which fabric entry, or portion of an entry, was sold to a particular manufacturer. The commenter questions how an importer will be able to determine a method of allocating the higher price fabrics to its customers.

Customs Response:

Customs does not require that an importer allocate to a manufacturer the specific entry for the fabric that was sold to that manufacturer. Rather, the importer need only allocate those entries on which an amount was paid in duties that substantiates the amount of duty refund being claimed by the manufacturer.

Comment:

Distinction between HTSUS provisions that may be used to substantiate wool duty refund claims for claim year 2000, and for claim years 2001 and 2002

One commenter notes that the language in proposed § 10.184(c)(2) that read, "[A] manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheadings 5107.10.00 and 9902.51.13 ...," should be changed to read, in pertinent part, "... 5107.10.00 or 9902.51.13 ... ." The commenter points out that the amended language should reflect the construction used in paragraphs (c)(1) and (c)(3).

Customs Response:

This comment precipitated Customs review of the entire structure of § 10.184(c) and (f). It is Customs view that a distinction must be made in the final regulations as to which tariff provisions may be used to substantiate a wool duty refund in each of claim years 2000, 2001, and 2002. In this regard, the final regulations state that the chapter 51, HTSUS, provisions identified in paragraphs (c) and (f) provide the basis for a wool duty refund for claim year 2000, and the HTSUS 9902 subheadings identified in these paragraphs provide the basis for a refund for claims years 2001 and 2002. This distinction is necessitated by the terms of section 505, which only authorizes the refund of duties paid in each of claim years 2000, 2001, and 2002, on imports of certain wool products described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 and 9902.51.14. As these 9902, HTSUS, provisions will only go into effect on January 1, 2001, it is impossible for a claimant to use these provisions to substantiate a year 2000 claim. For this reason, Customs is permitting claimants to substantiate year 2000 claims with the chapter 51, HTSUS, tariff provisions identified in the regulations. Customs will not permit the chapter 51 tariff provisions to be used to substantiate wool duty refund claims for claim years 2001 and 2002, inasmuch as these tariff provisions are broader in scope (they contain no limiting micron criteria in their legal heading text) than the designated 9902, HTSUS, provisions. To do so would result in the Treasury Department refunding more monies than it is statutorily authorized to do.

Comment:

Micron Limitation

One commenter notes that the proposed regulations allowed no refund of duties paid on imports of wool yarn of 18.5 micron or finer.

Customs Response:

As Congress did not expressly provide for the refund of duties paid on imports of wool yarn of 18.5 micron or finer in section 505, Customs, as an administrative agency, may not exceed what is statutorily authorized.

Comment:

Manufacturers of Wool Fabric and Wool Yarn

One commenter raises the issue that the proposed regulations did not provide for duty refunds where the manufacturer of wool fabric purchases imported wool yarn or where the manufacturer of wool yarn purchases imported wool fiber or wool top.

Customs Response:

Sections 505(b) and 505(c) require that manufacturers of wool fabric and wool yarn also be importers of eligible wool products in order to

be eligible to receive a wool duty refund under the terms of the statute. It is noted that section 505(a) does not require a manufacturer of men's or boys' suits, suit-type jackets, or trousers of worsted wool fabric to also be an importer of worsted wool fabric to be eligible for the refund. Customs has interpreted this difference in statutory construction to mean that Congress did not intend to provide wool duty refunds under sections 505(b) and 505(c) to manufacturers who are not importers.

Conclusion and Other Changes

After analysis of the comments and further review of the matter, Customs has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (65 FR 641780) on October 26, 2000, as corrected by the document published in the **Federal Register** (65 FR 66589) on November 6, 2000, with the changes mentioned in the comment discussion and with the following additional change that removes unnecessary language.

Customs has removed the regulatory text language in proposed § 10.184(j)(1) regarding the order of precedence for purposes of refunding duties paid on eligible wool imports. As each manufacturer that timely and completely files a claim pursuant to the terms set forth in this section, regardless of the date and time of filing, is eligible to receive its verified claim, there is no need to establish an order of precedence.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments conform the Customs Regulations to reflect the terms of section 505, within Title V, of the Trade and Development Act of 2000, which authorizes a refund of duties paid on imports of certain wool articles, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515-0227. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information in this final rule is in § 10.184 of the Customs Regulations. The information requested is necessary to implement the terms

of section 505 of the Trade and Development Act of 2000, whereby Customs is authorized to substantiate and process claims for refunds of duties paid in each of calendar years 2000, 2001, and 2002, on imports of certain wool products. The collection of information is required in order for a claimant to obtain the duty refund. The likely respondents are business organizations who seek a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002.

The estimated average annual burden associated with the collection of information in this final rule is 290 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch at the address set forth above.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 10 and 178 of the Customs Regulations (19 CFR parts 10 and 178) are amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised, and a new specific authority citation for § 10.184 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106-200, 114 Stat. 251;

* * * * *

2. A new §10.184 is added to read as follows:

§ 10.184 Refund of duties on certain wool imports.

(a) *General.* Section 505 of Title V of Pub. L. 106-200 (114 Stat. 251), entitled the Trade and Development Act of 2000, authorizes the President to refund duties paid on imports of eligible wool products. The statute permits eligible importing-manufacturers and, in certain circumstances, manufacturers who are not importers, to apply for a refund of duties paid on imports of eligible wool products in each of three succeeding years. Claimants are eligible for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002, limited to an amount not to exceed one-third of the duties paid on such wool products imported in calendar year 1999. This section sets forth the legal requirements and procedures that apply for purposes of obtaining this duty refund.

(b) *Eligible wool products.* For purposes for this section, the term "eligible wool product" means an imported wool product described under a Harmonized Tariff Schedule of the United States subheading listed under paragraph (c) of this section, relevant to a manufacturer of the particular wool products specified in paragraph (c).

(c) *Refunds authorized by section 505* – (1) *Worsted wool fabric.* In calendar year 2000, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and in each of calendar years 2001 and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, is eligible to claim a limited refund of the duties paid in such calendar years on entries of such fabrics that were purchased by the manufacturer. The amount of duties eligible to be refunded to the manufacturer in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid on calendar year 1999 imports of worsted wool fabrics described in HTSUS subheadings 5112.11.20 or 5112.19.90 that were purchased by the manufacturer. A broker or other individual acting on behalf of the manufacturer is ineligible to claim a duty refund.

(2) *Wool yarn.* A manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 5107.10.00, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool yarn in calendar year 2000. A manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 9902.51.13, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool yarn in each of calendar years 2001 and 2002. The amount of duties eligible to be refunded in each of these calendar years is lim-

ited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on wool yarn described in HTSUS subheading 5107.10.00 and imported in calendar year 1999.

(3) *Wool fiber and wool top.* A manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool fiber or wool top in calendar year 2000. A manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool fiber or wool top in each of calendar years 2001, and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on wool fiber or wool top described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29 and imported in calendar year 1999.

(d) *Manufacturer's letter of intent to file a claim for a wool duty refund.* A manufacturer that anticipates filing a wool duty refund claim in calendar years 2000, 2001, and 2002, pursuant to the terms of paragraph (c) of this section, must first file with Customs a letter of intent to that effect. A manufacturer's letter of intent must substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

(1) *Documentation required where the manufacturer is the importer.* Where a manufacturer is the importer of the eligible wool products imported in calendar year 1999, a letter of intent to file a wool duty refund claim must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer and must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful. The letter of intent must contain the following information:

(i) A statement of the total amount of duties paid by the importing-manufacturer on eligible wool products imported in calendar year 1999;

(ii) A list of relevant entry summary numbers, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount set forth in paragraph (d)(1)(i) of this section; and

(iii) A statement that no entry summary has been listed in paragraph (d)(1)(ii) of this section that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

(2) *Documentation required where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool fabric

of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, but possesses the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 to the manufacturer;

(B) Copies of all relevant invoices, set forth as an attachment, that demonstrate that the manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s) and that establish, where applicable, that the identified supplier(s) purchased such fabric from the identified importer(s);

(C) A completed Customs Form (CF) 5106 – Importer ID Input Record, set forth as an attachment; and

(D) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(*4*) If the affiant purchased fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section from an identified supplier, a statement that the affiant has been provided with substantiating documentation that establishes that the subject fabric was imported by the identified importer; and

(*5*) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the submitted invoices, and such information is set forth as an attachment; and/or

(*6*) A statement by the affiant that the identified importer has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached.

(ii) A non-importing manufacturer's affidavit to substantiate the

amount of duties paid on worsted wool fabric imported in calendar year 1999 must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer possesses the relevant entry summary numbers for the fabric identified in the invoices submitted with this affidavit)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (2) above to the undersigned or to identified supplier(s), and to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) If an importer assists in the substantiation of a non-importing manufacturer's letter of intent by submitting relevant entry summary numbers directly to Customs as an attachment to a signed affidavit, the importer's affidavit must be signed by the importer or a knowledgeable officer or employee of the importer and must state that, to the best of the affiant's knowledge and belief, the information contained in the affidavit is accurate and truthful. The importer's signed affidavit must contain the following information:

(A) A statement that the affiant paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;

(B) Identification of the claimant, or supplier to the claimant, to whom the affiant sold imported worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section;

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section, imported in calendar year 1999, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duty paid in calendar year 1999 on the fabric sold to the identified claimant or identified supplier, as evidenced by the claimant's invoices; and

(D) A statement that the importer has not listed any entry summary in paragraph (d)(2)(iii)(C) of this section that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90.

(iv) The importer's affidavit in support of a non-importing manufacturer's letter of intent to claim a wool duty refund must be signed by the importer or a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent to Claim a Wool Duty Refund

1. The undersigned, (*name of importer*), is an importer who paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in calendar year 1999 on the fabric that was sold to (*name of manufacturer*) or to (*name of supplier(s)*) by the undersigned;

4. The undersigned has not listed any entry summary in item (3) above that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.11.90; and

5. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(3) *Documentation required where the manufacturer is not the importer and the manufacturer does not possess the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and does not possess the relevant entry summary num-

bers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent, where the manufacturer does not possess the relevant entry summary numbers, must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 to the non-importing manufacturer;

(B) Copies of all relevant calendar year 1999 invoices, set forth as an attachment, that demonstrate that the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s);

(C) A statement that if the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified supplier, the manufacturer has substantiating documentation that establishes that such fabric was imported by the identified importer;

(D) A completed Customs Form (CF) 5106 – Importer ID Input Record, set forth as an attachment; and

(E) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement of the quantity of imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of the relevant invoices attached;

(*4*) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(*2*) of this section from an identified supplier, the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer; and

(*5*) A statement by the affiant that a good faith effort was made to contact the identified importer and request relevant entry summary numbers that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but

the identified importer is unable or unwilling to provide such assistance.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid by the importer on worsted wool fabric imported in calendar year 1999, where no entry summary numbers are available, must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer does not possess the relevant entry summary numbers for the fabric identified in the invoices submitted with this affidavit)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of relevant invoices are attached;

4. If the undersigned has purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5. The undersigned attests that a good faith effort was made to contact the identified importer(s) and request that relevant entry summary numbers be provided to either the undersigned or directly to Customs that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance.

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(4) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must submit to Customs a letter of intent to file a wool duty refund claim that is signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of in-

tent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) With respect to fabric where the manufacturer is the importer, the letter of intent must contain the information described in paragraph (d)(1) of this section.

(ii) With respect to such fabric where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers, the letter of intent must contain the information described in paragraph (d)(2) of this section and the relevant entry summary numbers may be submitted directly to Customs by the manufacturer and/or the importer(s).

(iii) With respect to such fabric where the manufacturer is not the importer, and the manufacturer does not possess the relevant entry summary numbers, the letter of intent must contain the information described in paragraph (d)(3) of this section.

(5) *Documentation required where a prospective claimant is the legal assignee of an eligible manufacturer's potential wool duty refund rights.* To file a letter of intent where the prospective claimant is the legal assignee of any potential wool duty refund claim rights attributable to an eligible manufacturer described in paragraph (c) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the letter of intent, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(6) *Time to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be received by Customs no later than March 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

(7) *Place to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048-0945.

(e) *Customs verification letter.* Customs will issue to a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a timely and complete letter of intent that relies solely on relevant entry summary numbers to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. Where a prospective claimant submits a letter of intent that relies on invoices, in whole or in part, to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999, Customs will issue a verification letter to such prospective claimant within 30 cal-

endar days after the date all letters of intent must be received by Customs, as set forth in paragraph (d)(5) of this section. The amount of potential duty refund will be based on the quantity of eligible wool products that was imported by the prospective claimant or, where the prospective claimant was not the importer, purchased by the prospective claimant (as indicated by submitted invoices). If entry summary numbers are used to substantiate the amount of duties paid on eligible wool products in calendar year 1999, the potential refund amount will be limited to the amount of duties paid on such entry summaries that is attributable to that quantity of eligible wool products. If invoices are used to substantiate the amount of duties paid on worsted wool fabrics in calendar year 1999, the amount of duties will be determined by deducting 10 percent from the invoice amounts, dividing the resulting adjusted invoice amounts by 100% plus the duty rate (30.6%) to back out the duty, and then multiplying that amount times the duty rate (30.6%). If the aggregate amount of duties attributable to an importer exceeds the amount of duties paid by that importer in calendar year 1999, as indicated by ACS, an adjustment will be made to those claimants requiring use of the invoice formula. The percentage deducted from the invoice amounts for those claimants will be increased on a *pro rata* basis to ensure that the aggregate amount to be refunded does not exceed the ACS amount. Refund amounts substantiated by entry summary numbers will not be reduced. A letter of verification will set forth the following information:

(1) The prospective claimant's claim identification number;

(2) The maximum amount of wool duty refund that the individual prospective claimant will be eligible to receive in each of calendar years 2000, 2001, and 2002; and

(3) Where invoices are used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, the percentage that was deducted from the invoice amounts, with accompanying explanation.

(f) *Eligibility criteria to claim a duty refund in calendar years 2000, 2001, and 2002.* To be eligible to claim a refund of duties paid on imports of certain wool products in calendar years 2000, 2001, and 2002, a claimant must be in receipt of a claim verification letter from Customs. Additionally, a claimant must be:

(1) In calendar year 2000, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, for which duties were paid in that year;

(2) In calendar years 2001 and 2002, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, for which duties were paid in those years;

(3) In calendar year 2000, a U.S. manufacturer of worsted wool fabric who paid duties in that year on imported wool yarn of the kind described in HTSUS subheading 5107.10.00;

(4) In calendar years 2001 and 2002, a U.S. manufacturer of worsted wool fabric who paid duties in those years on imported wool yarn of the kind described in HTSUS subheading 9902.51.13;

(5) In calendar year 2000, a U.S. manufacturer of wool yarn or wool fabric who paid duties in that year on imported wool fiber or wool top of the kind described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29;

(6) In calendar years 2001 and 2002, a U.S. manufacturer of wool yarn or wool fabric who paid duties in those years on imported wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14; or

(7) A legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section.

(g) *Procedures for filing a claim* – (1) *Time to file.* An eligible claimant may file with Customs one wool duty refund claim for each of calendar claim years 2000, 2001 and 2002, including, where applicable, related amended claims. A claim may be amended within 90 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support the claim as requested or is otherwise defective (*e.g.*, a claim that relies on an entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j)), within 90 calendar days from the date of the Customs notification. All claims for a wool duty refund, whether original or amended in the absence of a Customs notification of insufficiency or defect, must be received by Customs no later than December 31 of the year following the calendar claim year for which a wool duty refund is being sought. An amended claim made in response to a Customs notification of insufficiency or defect may be submitted to Customs after the December 31 deadline applicable to all other claim submissions. A claimant may file two separate duty refund claims in a single calendar year, so long as the claims are for two different claim years.

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048-0945.

(3) *Documentation.* (i) *Where the manufacturer is the importer.* To file a wool duty refund claim, an importing-manufacturer must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is a U.S. manufacturer of the kind described in either paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section, in the current calendar claim year;

(B) A statement of the total amount of duties paid by the affiant in that year on eligible wool products;

(C) The total amount of duty refund being claimed;

(D) A list of relevant entry summary numbers, set forth as an attachment and submitted to Customs in either a paper or an electronic format (the latter on diskette), that substantiates the amount of duties for which a refund is being claimed in paragraph (g)(3)(i)(C) of this section, and does not exceed the affiant's share of duties eligible to be refunded as set forth in the attached verification letter;

(E) A statement that no entry summary has been listed in paragraph (g)(3)(i)(D) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(F) A statement that identifies, if applicable, any entry summary listed in paragraph (g)(3)(i)(D) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(ii) *Form of affidavit.* An importing-manufacturer's signed affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002 must be signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, and submitted to Customs in the following format:

Importing-Manufacturer's Affidavit in Support of a Claim for a Wool Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year _____

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of the kind described in either paragraphs (f)(1) [__], (f)(2) [__], (f)(3) [__], (f)(4) [__], (f)(5) [__], or (f)(6) [__] [check one] of § 10.184 of the Customs Regulations (19 CFR 10.184(f)), in the current calendar claim year;

2. The undersigned paid (*total amount of duties paid*) in calendar year _____ on eligible wool products;

3. The amount of wool duty refund being claimed is $_____;

4. Attached is a list of the relevant current claim year entry summary numbers that substantiate the amount of duty refund being claimed in item (3) above;

5. The undersigned has not listed any entry summary in item (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

6. The undersigned will list any entry summary in item (4) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

7. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) *Where the manufacturer is not the importer.* To file a wool duty refund claim a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HSTUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, who is a purchaser but not the importer of such fabric, must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that in calendar claim year 2000, the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, or, a statement that in calendar claim years 2001 and 2002, the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12 in calendar claim years 2001 and 2002;

(B) A statement that the affiant is not the importer in the current calendar year of imported worsted wool fabric of the kind described in paragraph (A) above;

(C) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (A) above that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(D) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (A) above from an identified supplier(s), the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer(s); and

(E) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices, and such information is set forth as an attachment; and/or

(F) A statement by the affiant that the identified importer(s) has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached, that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices.

(iv) *Form of affidavit.* A manufacturer who is not the importer of the imported worsted wool fabric must submit to Customs an affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year _____

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer in calendar year _____ of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2001);

2. The undersigned was not the importer of imported worsted wool fabric of the kind described in item (1) above;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer(s)*) or from a supplier(s), and the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to (*name of supplier*), and has agreed to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(v) *Required content of an importer's signed affidavit in support of a manufacturer's wool duty refund claim.* Where an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting relevant entry summary numbers directly to Customs, such entry information must be set forth as an attachment to an affidavit that is signed by the importer or by a knowledgeable officer or employee of the importer, and must contain the following information:

(A) A statement as the total amount of duties that the importer paid in the current calendar claim year on worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section;

(B) A statement that the importer sold worsted wool fabric of the kind described paragraph (g)(3)(iii) of this section, to the identified manufacturer or to the identified supplier(s);

(C) A list of relevant entry summary numbers for the worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section,

set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid during the current calendar claim year on such fabric that was sold by the importer to the identified manufacturer or to the identified supplier(s);

(D) A statement that no entry summary number has been listed in paragraph (g)(3)(v)(C) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(E) A statement that lists any entry summary number in paragraph (g)(3)(v)(C) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(vi) *Form of affidavit.* The importer's affidavit in support of manufacturer's wool duty refund claim must be signed by the importer or by a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year _____

1. The undersigned, (*name of importer*), is an importer who [check one] paid duties in calendar year 2000 [__] on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, or who paid duties in calendar year 2001 [__] or calendar year 2002 [__] on worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in the current calendar claim year on such fabric that was sold by the undersigned to (*name of manufacturer*) or to an identified supplier(s) (*name of supplier*);

4. The undersigned has not listed any entry summary in item (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

5. The undersigned will list any entry summary in item (3) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(vii) *Documentation required where the manufacturer is both an*

importer and a purchaser of eligible worsted wool fabric. Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must provide Customs with both the documentation described in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, and the documentation described in paragraphs (g)(3)(iii) and (g)(3)(iv) of this section.

(viii) *Documentation required where the claimant is the legal assignee of an eligible manufacturer's wool duty refund claim rights.* To file a wool duty refund claim where the claimant is the legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the claim, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund duty refund.

(h) *Wool duty refund claim processing procedures.* Upon receipt of a timely and complete wool duty refund claim filed pursuant to the terms of this section, Customs will determine the liquidation status of the entry summaries used to substantiate the claim. No duty refund will be issued to a claimant until all the entry summaries identified for purposes of substantiating the claim have been finally liquidated and the applicable amendment period, as set forth in paragraph (g)(1) of this section has expired or the claimant has submitted to Customs a signed waiver of amendment.

(i) *Denial of a wool duty refund claim.* Customs may deny a wool duty refund claim if the claim was not timely filed, if the claimant is not eligible pursuant to the terms of this section, or if the claimant has not complied with the requirements of this section. Customs will provide the claimant with written notice of the denial of the claim, including the reason for the denial.

(j) *Multiple refund claims and pending judicial review* – (1) *Allowance or denial of subsequent claims.* If an entry has been used to provide the basis for a duty refund claim pursuant to this section, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback, or any other refund claim authorized by law, that is based on that entry, will be denied by Customs. If an entry has been used to substantiate a claim for a duty refund under this section, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for subsequent duty refund claims under this section, drawback, or any other refund claim authorized by law. An entry that has already had 99% or more of the duties paid on that entry refunded by way of a drawback claim, protest, or any other claim authorized by law, may not be used to provide the basis for a wool duty refund claim.

(2) *Substitution of entry summary numbers.* If a duty refund claim under this section has not yet been processed by Customs, an importer may substitute an entry summary that has already been iden-

tified to Customs for purposes of substantiating the claim with another comparable entry summary, so long as the amount of duty paid in connection with the replacement entry is not less than the duty paid on the entry that was identified to Customs originally.

(3) *Pending judicial review.* If a summons involving the tariff classification or the dutiability of an imported wool product has been filed in the Court of International Trade, Customs will deem any entry summary at issue in that judicial proceeding ineligible to substantiate a duty refund claim.

(k) *Penalties and liquidated damages.* A wool duty refund claimant's failure to comply with any of the procedural requirements set forth in this document, or failure to adhere to all applicable laws and regulations, may subject the claimant to penalties, liquidated damages or other administrative sanctions.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	*Description*	*OMB Control No.*
*	* * *	*
§ 10.184	Refund of duties on certain wool imports.	1515-0227
*	* * *	*

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: December 20, 2000.
TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the **Federal Register,** December 26, 2000 (65 FR 81344)]

(T.D. 01–02)

SYNOPSES OF DRAWBACK RULINGS

The following are synopses of drawback rulings approved May 28, 1998, to September 29, 2000, inclusive, pursuant to Subparts A & B, Part 191 of the Customs Regulations.

In the synopses below are listed for each drawback ruling approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the date the application was signed, the Port Director to whom the ruling was forwarded to or approved by, the date on which it was approved and the ruling number.

Dated: December 15, 2000.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: **Akzo Nobel Polymer Chemicals LLC**
Articles: GP-1 catalyst (titanium trichloride in heptane)
Merchandise: Diisopentyl ether (a/k/a Diisoamylether)
Application signed: March 1, 2000
Ruling Forwarded to PD of Customs: New York, September 13, 2000
Effect on other rulings: None
Ruling: 44-06016-000

(B) Company: **Autoliv ASP, Inc.**
Articles: Automobile air bag inflator modules; inflator assemblies; chemical tablets
Merchandise: Guanidine nitrate; 5,5'-B1-1H-tetrazole diammonium salt (diammonium biterazole); sodium azide
Application signed: January 24, 2000
Ruling Forwarded to PDs of Customs: San Francisco, Houston & New York, July 12, 2000
Effect on other rulings: None
Ruling: 44-05978-000

(C) Company: **Aventis CropScience USA-LP**
Articles: ALIETTE® fungicide formulations (agrochemical fungicides)
Merchandise: Aluminum tris (o-ethyl phosphonate) a/k/a Fosetyl-AL technical
Application signed: April 28, 2000

Ruling Forwarded to PD of Customs: New York, September 20, 2000
Effect on other rulings: Successor to **Rhône-Poulenc AG Company, Inc. T.D. 00-42-V (44-03911-001)** under 19 U.S.C. 1313(s)
Ruling: 44-03911-002

(D) Company: **Aventis CropScience USA-LP**
Articles: Pesticides
Merchandise: Fipronil technical
Application signed: April 28, 2000
Ruling Forwarded to PD of Customs: New York, September 19, 2000
Effect on other rulings: Successor to **Rhône-Poulenc AG Company Inc., T.D. 00-42-W (44-04915-001)** under 19 U.S.C. 1313(s)
Ruling: 44-04915-002

(E) Company: **Avocet Tungsten, Inc.**
Articles: Ammonium Paratungstate (APT); Tungsten Blue Oxide (TBO); Ammonium Metatungstate (AMT); Tungsten Yellow Oxide
Merchandise: Tungsten Concentrates (high and low grades); Sodium Tungstate (high and low grades); Calcium Tungstate; Tungstic Acid; Ammonium Paratungstate
Application signed: March 7, 2000
Ruling Forwarded to PD of Customs: New York, September 14, 2000
Effect on other rulings: Revokes **T.D. 96-45-E, and T.D. 97-12-G**
Ruling: 44-06014-000

(F) Company: **Bestfoods**
Articles: Not modified
Merchandise: Not modified
Supplemental application signed: April 24, 1998
Modification approved by Port Director of Customs in accordance with §191.8(g)(2): New York, May 28, 1998
Effect on other rulings: Modifies **T.D. 96-62-D; 44-04697-000** to cover change in company name from **CPC International Inc.**
Ruling: 44-04697-001

(G) Company: **Claremont Flock Corp.**
Articles: Cut flock fiber
Merchandise: Nylon polyamide fiber tow
Application signed: January 21, 2000
Ruling Forwarded to PDs of Customs: San Francisco, Miami & New York, August 7, 2000
Effect on other rulings: None
Ruling: 44-05999-000

(H) Company: **Creanova Inc.**
Articles: Colorants
Merchandise: Monastral Blue CSN (a/k/a Monolite Blue CSN); Yellow Ironoxide

Application signed: January 4, 2000
Ruling Forwarded to PD of Customs: New York, July 26, 2000
Effect on other rulings: None
Ruling: 44-05996-000

(I) Company: **Fuel and Marine Marketing LLC**
Articles: Marine lubricating oils
Merchandise: SAP 2138; SAP 3096 (marine oil additive concentrates)
Application signed: August 4, 1999
Ruling Forwarded to PD of Customs: New York, August 16, 2000
Effect on other rulings: None
Ruling: 44-05982-000

(J) Company: **General Electric Co.**
Articles: ULTEM® polyetherimide resin
Merchandise: m-phenylenediamine (MPD)
Application signed: February 15, 2000
Ruling Forwarded to PD of Customs: New York, July 14, 2000
Effect on other rulings: None
Ruling: 44-05987-000

(K) Company: **General Electric Company**
Articles: VALOX® resin a/k/a glass-fiber filled polybutylene terephthalate resin a/k/a PBT resin
Merchandise: Fiberglass
Application signed: January 7, 2000
Ruling Forwarded to PD of Customs: New York, July 10, 2000
Effect on other rulings: None
Ruling: 44-05976-000

(L) Company: **Intermagnetics General Corporation**
Articles: MRI magnets
Merchandise: NbTi/copper multifilament wire
Application signed: February 29, 2000
Ruling Forwarded to PD of Customs: New York, July 14, 2000
Effect on other rulings: None
Ruling: 44-05981-000

(M) Company: **Intermark Fabric Corp.**
Articles: Flocked greige fabric
Merchandise: Nylon cut flock fiber
Application signed: February 29, 2000
Ruling Forwarded to PDs of Customs: San Francisco, Miami & New York, August 29, 2000
Effect on other rulings: None
Ruling: 44-06013-000

(N) Company: **Keuchel Associates**
Articles: Spunfab PE-2900; Spunfab PE-2942; Spunfab PEX-71010; Spunfab VI-3042

Merchandise: Griltex 9 pellets (thermoplastic copolyester resin)
Application signed: February 11, 2000
Ruling Forwarded to PD of Customs: New York, July 12, 2000
Effect on other rulings: None
Ruling: 44-05979-000

(O) Company: **Monsanto Company**
Articles: Santicizer 2075 a/k/a triethylene glycol, di-2-ethyl hexanoate
Merchandise: 2-ethyl hexanoic acid (2-EHA)
Application signed: February 14, 2000
Ruling Forwarded to PD of Customs: Boston, August 16, 2000
Effect on other rulings: None
Ruling: 44-06000-000

(P) Company: **NCF Manufacturing Inc.**
Articles: Cationic monomers; dimethylaminoethyl acrylate (a/k/a ADAME or ADAM); dimethylaminoethyl methacrylate(a/k/a MADAME or MADAM)
Merchandise: Dimethylaminoethanol (Amietol 21) a/k/a DMOH; methyl acrylate a/k/a MA; methyl methacrylate a/k/a MMA
Application signed: February 3, 2000
Ruling Forwarded to PD of Customs: Boston, September 5, 2000
Effect on other rulings: None
Ruling: 44-06012-000

(Q) Company: **Pfizer, Inc.**
Articles: Viagra (bulk and tablet)
Merchandise: Not modified
Supplemental application signed: September 13, 2000
Ruling Forwarded to PD of Customs: New York, September 29, 2000
Effect on other rulings: **Modifies T.D. 00-23-S (44-05860-000)**
Ruling: 44-05860-001

(R) Company: **Pfizer Inc.**
Articles: Invecticide injections (REVOLUTION; STRONGHOLD)
Merchandise: Selamectin (UK 124-114 (dry))
Application signed: August 18, 1999
Ruling forwarded to PD of Customs: New York, July 21, 2000
Effect on other rulings: None
Ruling: 44-05992-000

(S) Company: **Pfizer Inc.**
Articles: UK-124,114, drug substance (Selamectin)
Merchandise: UK-136,151 ((25S)-25-cyclohexyl-5-demethoxy-25-de (1-methylpropyl)-22,23-dighydro-5-oxoavermectin A)
Application signed: February 1, 2000
Ruling forwarder to PD of Customs: New York, July 12, 2000
Effect on other rulings: None
Ruling: 44-05986-000

(T) Company: **Pratt & Whitney Services, Inc.**
Articles: Industrial combustion turbine parts
Merchandise: Turbine blades; turbine vanes; turbine heat shields; turbine burner inserts
Application signed: July 20, 2000
Ruling Forwarded to PD of Customs: New York, August 23, 2000
Effect on other rulings: None
Ruling: 44-06008-000

(U) Company: **Rhodia Inc.**
Articles: Methyl salicylate
Merchandise: Salicylic acid
Application signed: February 5, 1999
Ruling forwarded to PD of Customs: New York, August 23, 2000
Effect on other rulings: None
Ruling: 44-06007-000

(V) Company: **Sackner Products**
Articles: Door insert
Merchandise: Textiles fabrics: Chelsea, Matrix, Marina, Sanderson II, Prada, Howard, Chantelle; Vinyl sheeting
Application signed: April 18, 2000
Ruling forwarded to PD of Customs: Chicago, September 5, 2000
Effect on other rulings: None
Ruling: 44-06017-000

(W) Company: **Seton Company**
Articles: Finished whole hides and cut sets of leather
Merchandise: Whole hides upholstery leather
Application signed: June 21, 2000
Ruling forwarded to PD of Customs: New York, August 24, 2000
Effect on other rulings: None
Ruling: 44-06006-000

(X) Company: **Solutia Inc.**
Articles: Santoquin mixture 6 feed preservative (a/k/a ethoxyquin on feed grade vermiculite)
Merchandise: Para-phenetidine
Application signed: April 17, 2000
Ruling forwarded to PD of Customs: Chicago, September 20, 2000
Effect on other rulings: None
Ruling: 44-06021-000

(Y) Company: **Valtimet, Inc.**
Articles: Titanium and stainless steel skelp; titanium and stainless steel tubing
Merchandise: Titanium & stainless steel coiled strip; titanium and stainless steel skelp coil

Application signed: May 25, 2000
Ruling Forwarded to PD of Customs: New York, September 14, 2000
Effect on other rulings: None
Ruling: 44-06015-000

(Z) Company: **Velsicol Chemical Corporation**
Articles: Hexachlorocyclopentadiene (a/k/a HEX)
Merchandise: Dicyclopentadiene (DCPD)
Application signed: September 24, 1999
Ruling Forwarded to PD of Customs: Boston, July 20, 2000
Effect on other rulings: Terminates **T.D. 85-106-V (44-05907-000)**
Ruling: 44-05907-001

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 11–2000)

AGENCY: U.S. Customs Service, Department of the Treasury

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of November 2000. The last notice was published in the CUSTOMS BULLETIN on November 8, 2000.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building -3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: December 11, 2000.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0000200	20001102	20201102	X–14 IRON GOLF CLUB HEAD	CALLAWAY GOLF COMPANY	N
COP0000201	20001108	20191108	LIGHT CHASER	S. R. MICKELBERT COMPANY, INC.	N
COP0000202	20001108	20191108	LIGHT CHASER	S. R. MICKELBERT COMPANY, INC.	N
COP0000203	20001108	20191108	LIGHT CHASER II	S. R. MICKELBERT COMPANY, INC.	N
COP0000204	20001108	20201108	GUNDAM WING MODEL KITS PACKAGING	SOTSU AGENCY CO., LTD.	N
COP0000205	20001108	20201108	GUNDAM WING MODEL KITS PACKAGING	SOTSU AGENCY CO., LTD.	N
COP0000206	20001116	20201115	PORTRAIT OF VIPER SNAKE HEAD	DIRECTED ELECTRONICS, INC.	
SUBTOTAL RECORDATION TYPE			7		
TMK0000546	20001101	20100515	THE ORIGINAL B. D. BAGGIES DEVICE	THE APPAREL GROUP LTD.	N
TMK0000547	20001102	20030417	BUBBLE	E. GLUCK CORPORATION	N
TMK0000548	20001102	20020302	ANDRE RIVALLE	E. GLUCK CORPORATION	N
TMK0000549	20001102	20061119	STICK FIGURE DESIGN	E. GLUCK CORPORATION	N
TMK0000550	20001102	20100328	ESCAPE	E. GLUCK CORPORATION	N
TMK0000551	20001102	20050418	MICHEL BERNARD	HECKLER & ROCH, INC.	N
TMK0000552	20001102	20100501	G3	HECKLER & ROCH. INC.	N
TMK0000553	20001102	20100501	MP5	FASHION EXP. (TAIWAN) CO., LTD.	N
TMK0000554	20001102	20060123	WILD ROSE	TMW LICENSING II, INC.	N
TMK0000555	20001102	20010528	BARACUTA	THE CROSBY GROUP, INC.	N
TMK0000556	20001102	20100530	CG	THE CROSBY GROUP, INC.	N
TMK0000557	20001102	20100523	G209	THE CROSBY GROUP, INC.	N
TMK0000558	20001102	20200801	G-450	YKK CORPORATION	N
TMK0000559	20001102	20090304	YKK	YKK CORPORATION	N
TMK0000560	20001102	20071010	Y. K. K. AND DESIGN	YKK CORPORATION	N
TMK0000561	20001102	20021114	YKK (STYLIZED LETTERING)	YKK CORPORATION	N
TMK0000562	20001102	20030412	YKK	AEROGROUP INTERNATIONAL, INC.	N
TMK0000563	20001106	20070422	WHAT'S WHAT	RM ENGINEERED PRODUCTS, INC.	N
TMK0000564	20001106	20030310	POLY-V	THE GOODYEAR TIRE & RUBBER CO.	N
TMK0000565	20001106	20030920	GOODYEAR (& DESIGN)	THE GOODYEAR TIRE & RUBBER CO.	N
TMK0000566	20001106	20060413	GOODYEAR (& DESIGN)	THE GOODYEAR TIRE & RUBBER CO.	N
TMK0000567	20001106	20040131	GOODYEAR	THE GOODYEAR TIRE & RUBBER CO.	N
TMK0000568	20001106	20050916	GOODYEAR	BRAINERD COMMUNICATORS, INC.	N
TMK0000569	20001106	20090720	BRAINERD & DESIGN COMMUNICATORS, INC.	IVANKO BARBELL COMPANY	N
TMK0000570	20001108	20100926	CONFIGURATION OF A DUMBBELL	LANE BRYANT, INC.	N
TMK0000571	20001108	20090228	VENEZIA JEANS CLOTHING CO.	DUX DESIGN AB	N
TMK0000572	20001108	20090429	DUXIANA	DUX DESIGN AB	N
TMK0000573	20001108	20090131	DUX	TRAXXAS CORPORATION	N
TMK0000574	20001108	20090822	READY TO RACE	IVANKO BARBELL CORPORATION	N
TMK0000575	20001108	20090822	DESIGN	RUSK, INC.	N
TMK0000576	20001108	20070811	RUSK	RUSK, INC.	N
TMK0000577	20001108	20070811	RUSK	ORIS S. A.	N
TMK0000578	20001114	20091122	ORIS & DESIGN	THE OHIO ART COMPANY	N
TMK0000579	20001114	20100320	ETCH A SKETCH DESIGN CONFIGURATION	KWIKSET CORPORATION	N
TMK0000580	20001114	20050523	TYLO DOORKNOB DESIGN	TUCKER ENTERPRISES, LTD.	N
TMK0000581	20001114	20070708	ME TOO	JEAN-MICHEL DEVOUCOUX	N
TMK0000582	20001114	20070722	DEVOUCOUX		

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0000583	20001114	20091012	BRONZE LINE	PEARL ABRASIVE CO.	N
TMK0000584	20001114	20090706	FLEXTRON	PEARL ABRASIVE CO.	N
TMK0000585	20001114	20070225	HEXPIN	PEARL ABRASIVE CO.	N
TMK0000586	20001114	20050430	PEARL	PEARLMAN CORPORATION	N
TMK0000587	20001114	20050430	P	PEARLMAN CORPORATION	N
TMK0000588	20001114	20100314	EVERYONE E CONTENT RATES BY ESRB & DESIGN	INTERACTIVE DIGITAL SOFTWARE	N
TMK0000589	20001116	20100321	MICROBURST	APPLIED PRECISION, INC.	N
TMK0000590	20001116	20081020	APPLIED PRECISION	APPLIED PRECISION, INC.	N
TMK0000591	20001116	20080616	NANOVALVE	APPLIED PRECISION, INC.	N
TMK0000592	20001116	20070610	NANOMOTION	APPLIED PRECISION, INC.	N
TMK0000593	20001116	20070610	NANOMOVER	APPLIED PRECISION, INC.	N
TMK0000594	20001116	20080616	NANOVALVE	APPLIED PRECISION, INC.	N
TMK0000595	20001120	20060123	DELTAVISION	APPLIED PRECISION, INC.	N
TMK0000596	20001127	20050727	DURACELL	THE GILLETTE COMPANY	N
TMK0000597	20001127	20071114	DURACELL	THE GILLETTE COMPANY	N
TMK0000598	20001127	20001230	COPPER AND BLACK CYLINDRICAL BATTERY	THE GILLETTE COMPANY	N
TMK0000599	20001127	20010505	COPPER AND BLACK RECTANGULAR BATTERY	THE GILLETTE COMPANY	N
TMK0000600	20001127	20060518	DURACELL LABEL DESIGN	THE GILLETTE COMPANY	N
TMK0000601	20001127	20061118	DURACELL	THE GILLETTE COMPANY	N
TMK0000602	20001127	20030413	COPPER TOP	THE GILLETTE COMPANY	N
TMK0000603	20001127	20100215	ARIADNE	JACKI'S CHOICE	N

SUBTOTAL RECORDATION TYPE 58

TOTAL RECORDATIONS ADDED THIS MONTH 65

U.S. Customs Service

December 20, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notices

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF EFFERVESCENT BATH SALTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of classification ruling letters and revocation of treatment relating to the classification of effervescent bath salts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke or modify several ruling letters pertaining to the tariff classification of effervescent bath salts and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 2, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title

VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke or modify several ruling letters pertaining to the tariff classification of effervescent bath salts. Although in this notice Customs is specifically referring to several particular rulings, New York Ruling Letters (NY) C85744, issued April 6, 1998, E84228, issued August 10, 1999, E85194, issued August 11, 1999, E86258, issued September 1, 1999, and Headquarters Ruling Letter (HQ) 950893 issued, March 11, 1992, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the

importer or their agents for importations of merchandise subsequent to this notice.

In NY C85744, issued April 6, 1998, NY E84228, issued August 10, 1999, NY E85194, issued August 11, 1999, and HQ 950893, issued March 11, 1992, the classification of products commonly referred to as effervescent bath salts was determined to be in heading 3307.30.50, HTSUS, which provides for perfumed bath salts and other bath preparations: other. These ruling letters are set forth as Attachments "A" through "D" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error and that the correct classification of the articles is in subheading 3307.30.10, HTSUS, which provides for perfumed bath salts and other bath preparations: bath salts, whether or not perfumed.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke or modify NY C85744, issued April 6, 1998, NY E84228, issued August 10, 1999, NY E85194, issued August 11, 1999, HQ 950893, issued March 11, 1992, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 964670, 963260, 964669, and 964631 (*see* Attachments "E" through "H" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 18, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

April 6, 1998
CLA-2-33:RR:NC:2:240 C85744
Category: Classification
Tariff No. 3307.30.5000

MR. AL ANDREWS
BATH & BODY WORKS
7 Limited Parkway East
Reynoldsburg, OH 43068

Re: The tariff classification of an Effervescent Bath Ball from Canada and United Kingdom.

DEAR MR. ANDREWS:

In your letter dated March 23, 1998, you requested a tariff classification ruling.

A sample of an Effervescent Bath Ball was submitted with your inquiry. The Effervescent Bath Ball is sold in various sizes ranging from 110 grams to 220 grams. The bath balls are composed of citric acid, sodium bicarbonate, sodium carbonate, propylene glycol, canola oil, fragrance and colorants. The ball, intended for use in the tub, dissolves in the bath water in 5 minutes.

The applicable subheading for the Effervescent Bath Ball will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other. The rate of duty will be 4.9 percent *ad valorem*.

Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-466-5768.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

August 10, 1999
CLA-2-33:RR:NC:2:240 E84228
Category: Classification
Tariff No. 3307.30.5000; 3402.20.5000; 9903.08.04

MS. MIRIAM QUINONES
JUMBO TRANSPORT INTERNATIONAL, INC.
Port Elizabeth Plaza
1201 Corbin Street
Elizabeth, NJ 070201

Re: The tariff classification of Kneipp Rosemary Shower Gel, Kneipp Almond Herbal Shower-Bath Cream, Kneipp Melissa Sparkling Bath Tablet, Kneipp Juniper Sparkling Bath Tablet, Kneipp Almond Herbal Bath and Kneipp Juniper Herbal Bath from Germany.

DEAR MS. QUINONES:

In your letter dated July 29, 1999, you requested a tariff classification ruling on behalf of your client Kneipp Corporation of America.

Samples of the bath products were submitted with your inquiry. The Kneipp Rosemary Shower Gel and the Kneipp Almond Herbal Shower-Bath Cream, imported in a plastic, retail bottles, are used on the body via a sponge or directly massaged onto the skin for cleansing. The Kneipp Melissa Sparkling Bath Tablet,

and Kneipp Juniper Sparkling Bath Tablet, imported in foil wrapped tablets of 3 ounces each, are placed in the bath water. The tablets effervesce in the water, and are used to help smooth the skin. The Kneipp Almond Herbal Bath and Kneipp Juniper Herbal Bath, imported in plastic, retail bottles, are composed of essentials oils, emulsifiers and fragrance. They are poured into the bath water.

The applicable subheading for the Kneipp Almond Bath, Kneipp Juniper Herbal Bath, Kneipp Melissa Sparkling Bath Tablet and Kneipp Juniper Sparkling Herbal Bath Tablet will be 3307.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other. The rate of duty will be 4.9 percent *ad valorem*. Bath products, other than bath salts, which are products of the of the European Economic Community (EEC) are classifiable in subheading 9903.08.04, Harmonized Tariff Schedule of the United States (HTS) and are subject to a 100 percent duty rate.

The applicable subheading for the Kneipp Herbal Rosemary Shower Gel and Kneipp Almond Herbal Shower-Cream Bath will be 3402.20.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401: Preparations put up for retail sale: Other. The rate of duty will be free.

Cosmetic and toiletry products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-3380.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-637-7066.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

August 11, 1999
CLA-2-33:RR:NC:2:240 E85194
Category: Classification
Tariff No. 3307.30.5000; 4202.92.3031

MR. JOSHUA LEVY
ATICO INTERNATIONAL USA, INC.
P.O. Box 14368
Ft. Lauderdale, Florida 33301

Re: The tariff classification of an Aromatherapy Bath Gift Set (Item # C08C0022) from China.

DEAR MR. LEVY:

In your letter dated July 22, 1999, you requested a tariff classification ruling.

A sample of the Aromatherapy Bath Gift Set was submitted with inquiry and is being returned as requested. The gift set consists of a 65ml. bottle of foam bath, a heart shaped bath fizzer and a 65 ml bottle of cream bath packaged in a clear

zippered pouch. The pouch is a toiletry bag type of travel bag manufactured of polyvinyl chloride (PVC) sheeting which is wholly covered on the exterior with organza of man-made fibers. For Customs purposes, the item is not a set and each article will be classified separately.

The applicable subheading for the foam bath, bath fizzer and cream bath will be 3307.30.5000 Harmonized Tariff Schedule of the United States (HTS), which provides for Perfumed bath salts and other bath preparations: Other:.... The rate of duty will be 4.9 percent.

The applicable subheading for the zippered pouch will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The duty rate will be 18.8 percent *ad valorem*.

HTS 4202.92.3031 falls within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at www.customs.ustreas.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

Perfumery, cosmetic and toiletry products are subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-6553.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-637-7066.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

March 11, 1992
CLA-2 CO:R:C:F 950893
Category: Classification
Tariff No. 3307.30.5000

MR. DAVID B. BROWN
POTTER ANDERSON & CORROON
Delaware Trust Building
P.O. Box 951
Wilmington, DE 19899

Re: ActiBath Carbonated Bath Tablets; Bath Preparation in heading 3307.

DEAR MR. BROWN:

This is in response to your letter of November 18, 1991, submitted on behalf of your client, The Andrew Jergens Company. Your inquiry requests the proper classification of carbonated bath tablets under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You submitted samples with your request for a binding ruling.

Facts:

The product, known as ActiBath Carbonated Bath Tablets, imported from Japan, comes in four versions: Spring Floral, Blue Forest, Moisture Treatment and Light & Fresh. It is marketed as the world's first carbonated bath tablet which provides therapy for the body and mind. The tablets are composed of either succinic or fumaric acid, sodium bicarbonate, sodium carbonate, Peg-150, fragrance, calcium silicate, cellulose gum, magnesium oxide, sucrose stearate and FD&C Blue 1. The moisture treatment Actibath is composed of succinic acid, dextrin, sodium bicarbonate, sodium carbonate, cetyl octanoate, titanium dioxide, Peg-150, steareth-6, fragrance, petrolatum, oleth-9, cholesteryl isostearate, isostearic/myristic glycerides, polyquaternium-10, FD&C Blue No. 1, tocopherol. When exposed to water, the acid reacts with the sodium bicarbonate and sodium carbonate forming carbon dioxide bubbles.

Issue:

Whether the ActiBath Carbonated Bath Tablets are classifiable in subheading 3307.30.1000 as bath salts; or rather in subheading 3307.30.5000 as other bath preparations.

Law and Analysis:

The General Rules of Interpretation (GRI's) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. The majority of imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Pursuant to GRI 6, the GRI's, section notes and chapter notes pertain to subheadings in the same fashion.

The product is classifiable according to the terms of heading 3307 which provides, *inter alia*, for bath preparations. However, at the subheading level 3307.30.1000 provides for bath salts while 3307.30.5000 provides for other bath preparations. Pursuant to GRI 6, the product is classifiable according to the terms of the appropriate subheading. Thus, it is necessary to clarify the term "bath salt" and determine whether the subject product fits the definition. To this effect, the term is to be given its common or commercial meaning. *See* 2 D. Serko, Import Practice 79 (1991).

Bath salts may be formulated with either crystalline salts such as rock salt and epsom salt, which effloresce, or may be a product of sesquicarbonates, phosphates and borates. The latter type functions, in part, as a water softener while the former does not. Sodium carbonate serves as the water softening agent not only in bath salts, but also in bath tablets which may be formulated from crystals or sesquicarbonates as well. *See* 7 Kirk-Othmer, Encyclopedia of Chemical Technology 167 (1979) and H.W. Hibbott, Handbook of Cosmetic Science 123 (1963).

However, as the inquirer properly provides, and research confirms, sodium compounds or, more specifically, sodium carbonate, are commonly employed in, but not unique to, bath salts. Bath powders and water softeners are generally made with either dried sodium carbonate or sesquicarbonate while bath potpourri is generally made with borax crystals (a compound which includes a hydrated sodium borate). *See* 3 W. Poucher, Perfumes, Cosmetics and Soaps 3-18 (1960) and R. Harry, Cosmetics: Their Principles and Practices 508-516 (1956). In addition, the inquirer cites several bubble bath products which include either sodium laureth sulfate or sodium bicarbonate and sodium carbonate. In the past, it has been Customs' position that bubble bath is not classifiable as a bath salt. *See* Headquarter's

Ruling Letter (HRL) 085166. Thus, the fact that the product contains sodium carbonate or bicarbonate is not proof that it is, in fact, a bath salt. Contrary to the inquirer's position, the product is not distinguishable from a bath salt because of its soothing or relaxing effect. Apparently, all of the bath products mentioned above share this same quality. Likewise, for similar reasons, the product's skin moisturizing capabilities are not probative in this regard.

However, this product is distinguishable from a bath salt due to its unique ability to release carbon dioxide when placed in water, resulting from the chemical reaction between the succinic (or fumaric) acid and the sodium bicarbonate and sodium carbonate. Although bath salts, when placed in water, may effloresce, they do not, nor are expected to, react with water and release carbon dioxide bubbles producing the accompanying effect. For these reasons, the product is not a bath salt and is classifiable in subheading 3307.30.5000.

Holding:

The ActiBath Carbonated Bath Tablets are classifiable in subheading 3307.30.5000, HTSUSA, as "Pre-shave, shaving or after- shave preparations, personal deodorants, bath preparations...: Perfumed bath salts and other bath preparations: Other." The general column one rate of duty is 4.9 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

CLA-2 RR:CR:GC 964670ptl
Category: Classification
Tariff No. 3307.30.10

MR. AL ANDREWS
BATH & BODY WORKS
7 Limited Parkway East
Reynoldsburg, OH 43068

Re: Effervescent Bath Ball, NY C85744 revoked.

DEAR MR. ANDREWS:

Pursuant to your request of March 23, 1998, to the Director, National Commodity Specialist Division, New York Ruling Letter (NY) C85744 was issued on April 6, 1998, is which an article referred to as an effervescent bath ball, was classified in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of the effervescent bath ball therein is incorrect. Customs now believes the correct classification of the effervescent bath ball is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below.

Facts:

According to NY C85744, the product, an effervescent bath ball, sold in sizes ranging from 110 grams to 220 grams, is designed for use in the bathtub. The ingredients of the balls are: citric acid, sodium bicarbonate, sodium carbonate, propylene glycol, canola oil, fragrance, and colorants. The ball is designed to

dissolve in 90°F water in 5 minutes or less.

Issue:

What is the classification of the effervescent bath ball?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	* * *
3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In NY C85744, Customs classified the effervescent bath ball in subheading 3307.30.50, HTSUS, in reliance on HQ 950893, dated March 11, 1992, which made the question of whether or not a bath product was effervescent the primary classification distinction between headings 3307.30.10 and 3307.30.50, HTSUS. Those products which effloresced (defined as: *Chem.* to change either throughout or on the surface to a mealy or powdery substance upon exposure to air, as a crystalline substance through loss of water of crystallization. *Random House Dictionary of the English Language*) were classified in heading 3307.30.10, HTSUS, as bath salts and those which effervesced (defined as: to give off bubbles of gas *Random House Dictionary of the English Language*) were classified in heading 3307.30.50, HTSUS, as other bath products. Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The Random House Dictionary of the English Language defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the

following entry under "Bath Salts":

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.,* contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called "other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

The Effervescent Bath Ball is classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

NY C85744, dated April 6, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

CLA-2 RR:CR:GC 963260ptl
Category: Classification
Tariff No. 3307.30.10

THOMAS J. MCCARTHY, ESQ.
LARS-ERIK HJELM, ESQ.
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

Re.: Modification of NY E84228; Sparkling Herbal Bath Tablets.

DEAR MSSRS. MCCARTHY AND HJELM:

This is in response to your letter of October 29, 1999, on behalf of the Kneipp Corporation of America (Kneipp), requesting reconsideration of New York Ruling Letter (NY) E84228. NY E84228 was issued on August 10, 1999, to Kneipp's agent/broker and classified six different bath articles under the Harmonized Tariff Schedule of the United States (HTSUS). You are requesting reconsideration of NY E84228 insofar as it related to articles variously described as Sparkling Herbal Bath Tablets or Herbal Salt Bath Tablets. In NY E84228, the Melissa Sparkling Herbal Bath Tablet and the Juniper Sparkling Herbal Bath Tablet were classified in subheading 3307.30.50, HTSUS, which provides for perfumed bath salts and other bath preparations: other. You contend that the articles should be classified in subheading 3307.30.10, HTSUS, which provides for perfumed bath salts and other bath preparations: bath salts, whether or not perfumed. You have not requested reconsideration of the classification of the other four articles classified in NY E84228, and this letter does not address or affect those classifications.

In preparing this ruling, consideration has been given to your supplemental submission of November 15, 2000, and to the samples you have provided for examination.

We have determined that the classification of the sparkling herbal bath tablets provided by NY E84228 is incorrect . Pursuant to the analysis set forth below, the correct classification of sparkling herbal bath tablets is in subheading 3307.30.10, HTSUS.

Facts:

The articles under consideration are referred to in your presentation as "herbal salt bath tablets" although Kneipp refers to the articles, in both its product literature and labeling, as "sparkling herbal baths." Kneipp's literature describes the articles as "A special aroma-therapeutic treat. Effervescent tablets, activated by warm water, release aromatic essential oils to help renew mind and body." Each tablet weighs 3 ounces and is individually wrapped and labeled. The two versions of the tablets have slightly different formulae. According to the sample submitted, the ingredient list for the Juniper Sparkling Herbal Bath tablet is as follows: "Sodium Bicarbonate, Citric Acid, Nonfat Dry Milk, Fragrance, Soybean Oil, Corn Starch, Juniper Oil, Sodium Methyl Oleoyl Taurate, Silica, D&C Yellow No. 10." The "Juniper" label contains the statement: "To Soothe Tired, Sore Muscles". The ingredient list for the Melissa Sparkling Herbal Bath tablet is as follows: "Sodium Bicarbonate, Citric Acid, Nonfat Dry Milk, Citronella Oil, Soybean Oil, Corn Starch, Balm Mint Extract, Fragrance, Sodium Methyl Oleoyl Taurate, Silica, FD&C Yellow No. 6, D&C Yellow No. 10." The "Melissa" label contains the statement: "Relaxing, For a Good Night's Sleep".

Issue:

What is the classification of herbal sparkling bath tablets?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods

cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

* * *

3307.30 Perfumed bath salts and other bath preparations:

3307.30.10 Bath salts, whether or not perfumed

3307.30.50 Other

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor a industry definition of what is meant by the term "bath salts." The Random House Dictionary of the English Language defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts":

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

A review of industry literature, materials and advertising indicates that products which are denominated "bath salts" are predominately composed of **crystals** of sea salts or other "natural" salts. Other sodium compounds and ingredients may also be present in varying concentrations. However, it is the salinity and "softness" of the water (and its purported beneficial/luxurious quality) which results from using the various "bath salts" is repeatedly emphasized in the literature.

Your submission discusses HQ 950893, dated March 11, 1992, in which Customs classified a product, ActiBath Carbonated Bath Tablets, in subheading 3307.30.5000, HTSUS, as a product other than a bath salt because, among other reasons, it possessed the ability to release carbon dioxide when placed in water. You disagree with both the product analysis and classification result of HQ 950893. Customs has reviewed HQ 950893 and has determined that it erroneously classified the article. In a separate letter, being published simultaneously, Customs is revoking HQ 950893, and classifying the article as a bath salt (*See* HQ 964631).

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas,

which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

Chemically, the sodium bicarbonate in the bath tablet preparation has a dual functionality; namely, to produce an attractive effervescence and to soften the water.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are described by their manufacturers are "bath salts" and those which are called "other bath preparations". These latter articles include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly. Kneipp's Herbal Bath Tablets fall within the category of bath salts.

Since the herbal bath tablets contain chemical salts and do, indeed, function as water softeners, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the products are properly considered bath salts and classifiable in subheading 3307.30.10, HTSUS.

Holding:

For the reasons stated above, the Kneipp Juniper Sparkling Herbal Bath Tablets and the Kneipp Melissa Sparkling Herbal Bath Tablets are classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]erfumed bath salts and other bath preparations.

NY E84228, dated August 10, 1999, is modified insofar as it relates to the products discussed in this letter.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

CLA-2 RR:CR:GC 964669ptl
Category: Classification
Tariff No. 3307.30.1000

MS. ALICE LIU
ATICO INTERNATIONAL, INC.
P.O. Box 14368
Fort Lauderdale, FL 33301

Re: Bath Fizzer, NY E85194 modified.

DEAR MS. LIU:

Pursuant to a request from Atico dated July 22, 1999, to the Director, National Commodity Specialist Division, New York Ruling Letter (NY) E85194, was issued August 11, 1999, in which the various components of an Aromatherapy Bath Gift

Set (Item # CO8C0022) were classified. One article, referred to as a "bath fizzer", was classified in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of the bath fizzer therein is incorrect. Customs now believes the correct classification of the bath fizzer is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below. This ruling does not affect the classification of the other articles classified in NY E85194.

Facts:

According to NY E85194, several articles were packaged in an Aromatherapy Gift Bath Set. Three different products; a foam bath, a cream bath and a bath fizzer were all classified in subheading 3307.30.50, HTSUS. This letter only addresses the product identified as a bath fizzer and which is composed of the following ingredients: sodium carbonate, sodium sulfate, citric acid, sodium bicarbonate, sodium chloride, mineral oil, colorant and fragrance.

Issue:

What is the classification of the bath fizzer?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	* * *
3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In NY E85194, Customs classified the bath fizzer in subheading 3307.30.50, HTSUS, in reliance on HQ 950893, dated March 11, 1992, which made the question of whether or not a bath product was effervescent the primary classification distinction between headings 3307.30.10 and 3307.30.50, HTSUS. Those products which effloresced (defined as: *Chem.* to change either throughout or on the surface to a mealy or powdery substance upon exposure to air, as a crystalline substance through loss of water of crystallization. *Random House Dictionary of the English Language*) were classified in heading 3307.30.10, HTSUS, as bath salts and those which effervesced (defined as: to give off bubbles of gas *Random House Dictionary of the English Language*) were classified in heading 3307.30.50, HTSUS,

as other bath products. Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The Random House Dictionary of the English Language defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called "other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

The bath fizzer is classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

NY E85194, dated August 11, 1999, is modified in accordance with this letter.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

CLA-2 RR:CR:GC 964631ptl
Category: Classification
Tariff No. 3307.30.10

MR. DAVID B. BROWN
POTTER, ANDERSON & CORROON
Delaware Trust Building
P.O. Box 951
Wilmington, DE 19899

Re: ActiBath Carbonated Bath Tablets, HQ 950893 revoked.

DEAR MR. BROWN:

On March 11, 1992, Customs issued HQ 950893 to you on behalf of your client, The Andrew Jergens Company, which classified an article known as ActiBath Carbonated Bath Tablets [ActiBath], in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of ActiBath therein is incorrect. Customs now believes the correct classification of ActiBath is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below.

Facts:

According to HQ 950893, the product, ActiBath Carbonated Bath Tablets, comes in four versions: Spring Floral, Blue Forest, Moisture Treatment and Light & Fresh. It is marketed as the world's first carbonated bath tablet which provides therapy for the body and mind. The tablets are composed of either succinic or fumaric acid, sodium bicarbonate, sodium carbonate, Peg-150, fragrance, calcium silicate, cellulose gum, magnesium oxide, sucrose stearate and FD&C Blue 1. The moisture treatment Actibath is composed of succinic acid, dextrin, sodium bicarbonate, sodium carbonate, cetyl octanoate, titanium dioxide, isostearate, isostearic/myristic glycerides, polyquaternium-10, FD&C Blue No. 1, tocopherol. When exposed to water, the acid reacts with the sodium bicarbonate and sodium carbonate forming carbon dioxide gas.

Issue:

What is the classification of ActiBath Carbonated Bath Tablets?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room de-

odorizers, whether or not perfumed or having disinfectant properties:

* * *

3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In HQ 950893, Customs classified ActiBath in subheading 3307.30.50, HTSUS, as other bath preparations rather than in subheading 3307.30.10, HTSUS, because of "its unique ability to release carbon dioxide when placed in water, resulting from the chemical reaction between succinic (or fumaric) acid and the sodium bicarbonate and sodium carbonate." Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The Random House Dictionary of the English Language defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when succinic (or fumaric) acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called "other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

ActiBath Carbonated Bath Tablets are classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

HQ 950893 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BUTTERFAT MIXTURES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of butterfat mixtures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify one ruling letter and to revoke another pertaining to the tariff classification of butterfat mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 2, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Nanne Eliot Lewine, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify one ruling letter and to revoke another pertaining to the tariff classification of butterfat mixtures. Although in this notice Customs is specifically referring to two rulings, NY E89271 dated December 17, 1999, and NY B82737 dated March 7, 1997, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer

or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY E89271 dated December 17, 1999, set forth as Attachment A to this document, Customs classified certain butterfat mixtures, which were said to contain 74% or 78% milkfat, by weight, mixed with either salt or sugar and intended for use as ingredients to manufacture confectionery or other food items, under subheading 2106.90.64 and 2106.90.66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: ... Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

In NY B82737 dated March 7, 1997, set forth as Attachment B to this document, Customs classified certain butterfat mixtures, which were said to contain 95% anhydrous milkfat or butteroil, with a maximum moisture content of 0.5%, mixed with sucrose, lactose, salt, non-fat dry milk, or caseinate, and which were intended for sale to foodservice customers, under subheadings 0405.90.1020 and 0405.90.2020, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Other: Described in additional U.S. note 14 to chapter 4 and entered pursuant to its provisions; Anhydrous milk fat.

Since the issuance of these rulings, Customs has reviewed the classifications of the merchandise in the rulings extensively and has determined that the classifications are in error. The butterfat mixtures, which contain 74% or 78% milkfat, by weight, mixed with either salt or sugar, are properly classified under subheading 0405.20.6000 and 0405.20.7000, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Dairy spreads; Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The anhydrous milkfat or butteroil mixtures containing sucrose, lactose, salt, non-fat dry milk, or caseinate, are properly classified under subheadings 2106.90.6400 and 2106.90.6600, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: Other: Other: Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4 and entered pursuant to its provisions.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY E89271 and to revoke NY B82737 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQs 964706 and 964707, set forth as Attachments C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: December 14, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

December 17, 1999
CLA-2-21:RR:NC:2:228 E89271
Category: Classification
Tariff No. 2106.90.6400, 2106.90.6600

MR. GRAEME R. HONEYFIELD
GLINSO FOODS
3554 Round Barn Blvd.
Suite 310
Santa Rosa, CA 95403

Re: The tariff classification of food ingredients from Australia, Canada, United Kingdom, Denmark, South Africa, or New Zealand.

DEAR MR. HONEYFIELD:

In your letter dated September 22, 1999, you requested a tariff classification ruling.

Ingredients breakdowns accompanied your letter. The products are Confectionery Mixes (AMF 8911 – 89 percent anhydrous milkfat/11 percent granulated sugar, 8911B – 89 percent unsalted butter/11 percent granulated sugar, Salted – 89 percent anhydrous milkfat/11 percent salt, 8911B Salted – 89 percent unsalted butter/11 percent salt, AMF 9505 Salted – 95 percent anhydrous milkfat/5 percent salt, AMF 9505 – 95 percent anhydrous milkfat/5 percent sugar, 7805 Salted – 78 percent milkfat/5 percent salt/1.25 percent milk protein concentrate/ 16 percent water, 7805 – 78 percent milkfat/5 percent sugar/1.25 percent milk protein concentrate/16 percent water). The mixes will be imported in solid form, frozen, refrigerated, or at ambient temperature, in 25-kg cartons or 20mt bulk transport containers, for use as ingredients to manufacture confectionery or other food items.

The applicable subheading for the Confectionery Mixes, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 2106.90.6400, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations not elsewhere specified or included...other...containing over 10 percent by weight of milk solids...other, dairy products described in additional U.S. note 1 to chapter 4... described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10 percent *ad valorem*. The rate of duty will be unchanged in 2000. If the quantitative limits of additional U.S. Note 10 to chapter 4 have been reached, the product will be classified in subheading 2106.90.6600, HTS, and dutiable at the rate of 72.5 cents per kilogram plus 8.8 percent *ad valorem*. Effective January 1, 2000, products classified in subheading 2106.90.6600, HTS, will be dutiable at the rate of 70.4 cents per kilogram plus 8.5 percent *ad valorem*. In addition, products of Australia, The United Kingdom, Denmark, South Africa, and New Zealand, classified in subhead-

ing 2106.90.6600, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.04.59 to 9904.04.66, HTS.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-637-7065.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

March 7, 1997
CLA-2-04:RR:NC:2:231 682737
Category: Classification
Tariff No. 0405.90.1020; 0405.90.2020

MR. GEORGE KAMPOURIS
G. VAN KAM TRADING COMPANY LIMITED
4920 De Maisonneuve W., #11
Montreal, Quebec H3Z 1N1
Canada

Re: The tariff classification of anhydrous milk fat or butter oil from, Canada, Australia, New Zealand, Belgium, and the Netherlands.

DEAR MR. KAMPOURIS:

In your letter dated February 26, 1997, you have requested a tariff classification ruling.

The products are described thus:

1. Confectionery AMF 95S – a blend of anhydrous milk fat or butter oil (95 percent) and sucrose (5 percent).

2. Confectionery AMF 95L – a blend of anhydrous milk fat or butter oil (95 percent) and lactose (5 percent).

3. Salted AMF 95N – a blend o f anhydrous milk fat or butter oil (95 percent) and salt (5 percent).

4. Milky AMF 95/5 – a blend of anhydrous milk fat or butter oil (95 percent) and nonfat dry milk (5 percent).

5. AMF-PRO 95/5 – a blend of anhydrous milk fat or butter of 1 (95 percent) and milk protein (5 percent by weight of caseinate).

These products will be used as ingredients in the manufacture of confectionery items.

The applicable subheading for the Confectionery AMF 95S, Confectionery AMF

95L , Salted AMF 95N, Milky AMF 95/5, and AMF-PRO 95/5, if imported in quantities that fall within the limits described in additional U.S. note 14 to chapter 4, will be 0405.90.1020, Harmonized Tariff Schedule of the United States (HTS), which provides for butter and other fats and oils derived from milk: dairy spreads, other, described in additional U.S. note 14 to chapter 4 and entered pursuant to its provisions, anhydrous milk fat. The rate of duty will be 10 percent *ad valorem*. If the quantitative limits of additional U.S. note 14 to chapter 4 have been reached, the product will be classified in subheading 0405.90.2020, HTS, and will be dutiable at US $2.03 per kilogram, plus 9.2 percent *ad valorem*. In addition, products classified in subheading 0405.90.2020, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.05.37 - 9904.05.47, HTS.

An import license, issued to the importer by the United States Department of Agriculture, will be required at the time such merchandise is entered for consumption into the United States.

Questions regarding licensing procedures and applications for licenses to import dairy products subject to quota should be addressed to:

U.S. Department of Agriculture
Foreign Agricultural Service
Import Policies and Trade Analysis Division
Att: Dairy Import Group, Rm. 5531, So. Bldg.
Washington, DC 20250-1000

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466-5759.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT C]

CLA-2 RR:CR:GC 964706 nel
Category: Classification
Tariff No. 0405.20.60, 0405.20.70; 2106.90.64, 2106.90.66

MR. GRAEME R. HONEYFIELD
GLINSO FOODS
3554 Round Barn Blvd.
Suite 310
Santa Rosa, CA 95403

Re: Modification of NY E89271; butterfat mixtures.

DEAR MR. HONEYFIELD:

This letter is in regard to New York Ruling Letter (NY) E89271 issued to you by the Customs National Commodity Specialist Division on December 17, 1999, regarding classification of certain milkfat mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). After extensive review of the classifica-

tion of similar merchandise under the HTSUS, we have reconsidered NY E89271 and believe that the classification of a portion of the products therein is incorrect.

Facts:

NY E89271 dated December 17, 1999, classified certain milkfat confectionery mixes, which were to be imported from Australia, Canada, United Kingdom, Denmark, South Africa or New Zealand, in solid form, frozen, refrigerated, or at ambient temperature, in 25-kg cartons or 20mt bulk transport containers, for use as ingredients to manufacture confectionery or other food items. The products in issue herein, with their ingredient breakdown, are as follows:

> AMF 8911B – 89% butter (74% milkfat, 14.4% moisture, 0.7% protein), 11% sucrose.
>
> AMF 8911B (salted) – 89% butter (74% milkfat, 14.4% moisture, 0.7% protein), 11% salt.
>
> AMF 7805 – 78% milkfat, 16% water, 5% sucrose, 1.25% milk protein concentrate.
>
> AMF 7805 (salted) – 78% milkfat, 16% water, 5% salt, 1.25% milk protein concentrate.

In NY E89271, the products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted), were classified under subheadings 2106.90.64 and .66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: ... Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

Issue:

Whether the milkfat products, AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted), which consist predominantly of some form of milkfat mixed with other ingredients, are included within the scope of heading 0405, HTSUS, which provides for: Butter and other fats and oils from milk; dairy spreads.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the tariff system at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

> 0405 Butter and other fats and oils derived from milk; dairy spreads: and
> 2106 Food preparations not elsewhere specified or included.

Note 2(a) to chapter 4 defines "butter" as "... derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight,

a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless ... bacteria."

Note 2(b) to chapter 4 defines "dairy spreads" as "a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 percent or more but less than 80 percent by weight." According to EN 04.05(B), dairy spreads "may contain optional ingredients such as cultures of harmless ... bacteria, vitamins, sodium chloride, sugar, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives."

Heading 2106, HTSUS, provides for: Food preparations not elsewhere specified or included, and may be considered only when a more specific provision is not available. The ENs to the heading permit the inclusion of certain milkfat products "[p]rovided that they are not covered by any other heading of the Nomenclature, [for example]: ... (3) Preparations based on butter or other fats or oils derived from milk and used, *e.g.*, in bakers' wares."

The milkfat mixtures under consideration consist of butter with either salt or sugar added in amounts ranging from 5% to 11% by weight; or, milkfat with either salt or sugar added in amounts ranging from 5% to 11% by weight plus a small amount of milk protein. We first consider whether these products may be classified under heading 0405, HTSUS.

Two of the products classified in NY E89271 – AMF 8911B (salted) and AMF 8911B – are mixtures of butter with the added ingredient of salt or sugar. Based on chapter 4 note 2(a), butter with added salt, which has a milkfat content of 80% or higher is classifiable as butter under subheading 0405.10, HTSUS, which provides for: Butter. Mixtures of butter with either salt or sugar, in which the milkfat content is less than 80% but more than 39%, by weight, meet the chapter note 2(b) definition for "dairy spreads" of subheading 0405.20, HTSUS, which provides for: Dairy spreads.

Product AMF 8911B (salted) contains 89% butter and 11% salt. The product data sheet indicates the typical composition of the product, as imported, includes 73.9% milkfat, 11.0% salt, 14.4% moisture, and 0.7% protein. The definition of butter in chapter 4 note 2(a) allows the addition of salt to butter, but salted butter must contain 80% or more by weight of milkfat. Product AMF 8911B (salted) contains less than 80% milkfat and, therefore, is not butter for tariff purposes. However, the product is a spreadable water-in-oil type emulsion with a milkfat content of at least 39% and less than 80% by weight and, as such, meets the definition for dairy spreads in chapter 4 note 2(b). Product AMF 8911B (salted) will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Product AMF 8911B contains 89% butter and 11% sugar. The product data sheet indicates its typical composition includes 73.9% milkfat, 11.0% sucrose, 14.4% moisture, and 0.7% protein. AMF 8911B contains less than 80% milkfat and is not butter for tariff purposes. However, this product is a spreadable water-in-oil emulsion with a milkfat content within the range required for dairy spreads of subheading 0405.20, HTSUS. Sugar is an acceptable optional ingredient according to the ENs for this subheading. Product AMF 8911B will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Two of the products classified in NY E89271 – AMF 7805 and AMF 7805 (salted) – are mixtures of milkfat with additional ingredients. The product data sheet indicates the typical composition for AMF 7805, as imported, includes 78% milkfat, 5.0% sucrose, 16.2% moisture, 0.9% lactose, and 0.3% protein. Additionally, the data sheet states "[t]he fat in the product retains the quality of the original export unsalted butter quality." Milkfat is the only fat in the product. This product is a spreadable water-in-oil emulsion with a milkfat content within the range, 39% or more but less than 80% by weight, that meets the definition for "dairy spreads" of chapter 4 note 2(b). Sugars, sucrose and lactose, and protein are acceptable optional ingredients according to EN 04.05(B). Product AMF 7805 will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

The product data sheet indicates the typical composition for AMF 7805 (salted),

as imported, includes 78% milkfat, 5.0% salt, 16.2% moisture, 0.5% lactose, and 0.3% protein. Additionally, the data sheet states "[t]he fat in the product retains the quality of the original export unsalted butter quality." Milkfat is the only fat in the product. This product is a spreadable water-in-oil emulsion with a milkfat content within the range, 39% or more but less than 80% by weight, that meets the definition for "dairy spreads" of chapter 4 note 2(b). Salt (sodium chloride), sugar (lactose), and protein are acceptable optional ingredients according to EN 04.05(B). Product AMF 7805 (salted) will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Subheading 0405.20, HTSUS, dairy spreads, is subdivided into coequal subheadings which provide for: "Butter substitutes, whether in liquid or solid state," and "Other" products of the subheading. "Dairy spreads" which have been substantially sweetened or salted may be suitable substitutes for butter when used, for example, as an ingredient in ice cream or baked goods. However, these products are not suitable as substitutes for butter in substantially all of its uses and, therefore, would not be considered to be "butter substitutes." *See Rudolph Faehndrich v. United States*, 49 Cust. Ct. 1 (1962), which held that butteroil of 99.9% purity could not "take the place of butter in substantially all respects and substantially all conditions" and, therefore, was not classifiable as a butter substitute. Products AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) are classifiable under subheading 0405.20.60 and .70, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Dairy spreads: Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

Our decision to reclassify the products identified as AMF 8911B, 8911B (salted), 7805, and 7805 (salted) is also based on a comparison of these products with two rulings issued by the Harmonized System Committee of the World Customs Organization (HSC). These two rulings from the *Compendium of Classification Opinions*, issued by and reflecting the consensus of the HSC on the classification of butterfat mixtures in the Harmonized Tariff System (HTS), are useful to illustrate this interpretation of heading 0405.

> **0405.20 1. Butterfat mixture in the form of a water-in-oil type spreadable emulsion** and used in the food industry, consisting of, by weight, 68.75% butteroil, 17% sugar, 13% water and 1.25% casein. *See also* Opinion 2106.90/18.
>
> **2106.90 18. Butterfat mixture in the form of a yellowish paste** and used in the food industry, consisting of, by weight, 67.5% butterfat, 14% skimmed milk and 18.5% sugar. *See also* Opinion 0405.20/1.

Note that the composition of both products is very similar. However, the product, described as a "water-in-oil spreadable emulsion," was classified in heading 0405, HTS, while the second product, described as a mixture of butterfat with other ingredients, was classified in heading 2106, HTS. The second product was not butter or a dairy spread (*i.e.*, not a spreadable water-in-oil emulsion) and was determined to be distinct from other fats and oils derived from milk, since the product contained additional, non-butterfat, ingredients.

The decision to classify the milkfat products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) under heading 0405, HTSUS, conforms to these HSC rulings. These products, which consist of milkfat "mixture in the form of a water-in-oil type spreadable emulsion," are covered under a specific product definition, "dairy spreads," of heading 0405, HTSUS, and must be classified there, not as a more general milkfat "mixture" under heading 2106, HTSUS.

Holding:

The milkfat products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) are properly classified under subheading 0405.20.6000, HTSUS, under the tariff rate quota providing for: Butter and other fats and oils derived from milk; dairy spreads: Dairy spreads; Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. Should the quantity limitation for the quota provision in 0405.20.6000 have been reached, classification will be in subheading 0405.20.7000, HTSUS. Goods classifiable in subheading 0405.20.7000, HTSUS, are subject to additional safeguard duties listed in subheadings 9904.04.50 – 9904.05.01.

Effect on other Rulings:

NY E89271 dated is hereby MODIFIED with respect to the products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) as set forth herein.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

CLA-2 RR:CR:GC 964707 nel
Category: Classification
Tariff No. 0405.90.1020, 0405.90.2020; 2106.90.64, 2106.90.66

MR. GEORGE KAMPOURIS
G. VAN KAM TRADING CO., LTD.
4920 De Maisonneuve W., #11
Montreal, Quebec H3Z 1N1
Canada

Re: Revocation of NY B82737; butterfat mixtures.

DEAR MR. KAMPOURIS:

This letter is in regard to New York Ruling Letter (NY) B82737 issued to you by the Customs National Commodity Specialist Division on March 7, 1997, regarding classification of certain anhydrous milkfat or butteroil mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). After extensive review of the classification of similar merchandise under the HTSUS, we have reconsidered NY B82737 and believe that the classification of the products therein is incorrect.

Facts:

NY B82737 dated March 7, 1997, classified certain anhydrous milkfat and butterfat mixtures, which were to be imported from Canada, Australia, New Zealand, Belgium and the Netherlands, to be used as ingredients for the manufacture of confectionery or other food items. These products, each with a maximum moisture content of 0.5%, have ingredient breakdowns as follows:

Confectionery AMF 95S – 95% anhydrous milkfat or butteroil, 5% sucrose.

Confectionery AMF 95L – 95% anhydrous milkfat or butteroil, 5% lactose.

Salted AMF 95N – 95% anhydrous milkfat or butteroil, 5% salt.

Milky AMF 95/5 – 95% anhydrous milkfat or butteroil, 5% non-fat dry milk.

AMF-PRO 95/5 – 95% anhydrous milkfat or butteroil, 5% caseinate.

All of these products were classified under subheadings 0405.90.1020 and .2020, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Other: Described in additional U.S. note 14 to chapter 4 and entered pursuant to its provisions; Anhydrous milk fat.

Issue:

Whether anhydrous milkfat or butteroil products, which consist predominantly of some form of milkfat mixed with other ingredients, are included within the scope of heading 0405, HTSUS, which provides for: Butter and other fats and oils from milk; dairy spreads. If these products are not specifically provided for in heading 0405, HTSUS, or another heading, they are classified in heading 2106, HTSUS, which provides for: Food preparations not elsewhere specified or included.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the tariff system at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

0405 Butter and other fats and oils derived from milk; dairy spreads: and
2106 Food preparations not elsewhere specified or included.

Note 2(a) to chapter 4 defines "butter" as "... derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless ... bacteria."

Note 2(b) to chapter 4 defines "dairy spreads" as "a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 percent or more but less than 80 percent by weight." According to EN 04.05(B), dairy spreads "may contain optional ingredients such as cultures of harmless ... bacteria, vitamins, sodium chloride, sugar, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives."

The composition of the goods classified in heading 0405, HTSUS, is discussed in the EN 04.05. It is in these notes that "other fats and oils derived from milk" are described.

> This group covers fats and oils derived from milk (*e.g.*, milkfat, butterfat and butteroil). Butteroil is the product obtained by extracting the water and non-fat content from butter or cream.

> This group further includes dehydrated butter and ghee (a kind of butter made most commonly from the milk of buffaloes or cows), as well as products consisting of a mixture of butter and small quantities of herbs, spices, flavourings, garlic, etc. (provided they retain the character of the products falling in this heading)."

Milkfat, butterfat,[1] butteroil,[2] and ghee[3] are virtually pure fatty substances. Subheading note 2 to chapter 4 specifically excludes dehydrated butter and ghee from subheading 0405.10, HTSUS, which provides for: Butter, and places these anhydrous milkfat products under subheading 0405.90, HTSUS.

The General Explanatory Note (I) to chapter 4 lists the various dairy products provided for in the chapter. It also specifies the dairy products which, in addition to natural milk constituents, may contain certain additives, such as, stabilizing agents, antioxidants, vitamins not normally found in these products, processing chemicals and anti-caking agents. Butter, other fats and oils derived from milk, and dairy spreads of heading 0405, HTSUS, are not included in the list of products that may contain these additives.

In summary, heading 0405, HTSUS, based on the definitions above, includes "butter," a spreadable emulsion which may contain a small number of permitted additives; "dairy spreads," which are spreadable water-in-oil type emulsions containing a larger range of permitted additive ingredients; and "other fats and oils derived from milk," which – except for flavored butter — are virtually pure milkfat substances. Thus, it appears that within heading 0405, HTSUS, only certain additives are permitted and those additives are permitted only in spreadable emulsions such as butter, dairy spreads, and flavored butter. The requisite purity of the fat content precludes any additives in anhydrous milkfat, butterfat, butteroil, or ghee.

Heading 2106, HTSUS, provides for: Food preparations not elsewhere specified or included, and may be considered only when a more specific provision is not available. The ENs to the heading permit the inclusion of certain milkfat products "[p]rovided that they are not covered by any other heading of the Nomenclature, [for example]: ... (3) Preparations based on butter or other fats or oils derived from milk and used, *e.g.*, in bakers' wares."

The milkfat mixtures under consideration consist of anhydrous milkfat or butteroil and added ingredients. These are not the water-in-oil type emulsions, which by the terms of their definitions, are permitted additives under heading 0405, HTSUS. Accordingly, mixtures of anhydrous milkfat or butteroil with salts, sweeteners, or other non-milkfat ingredients are precluded from classification within heading 0405, HTSUS.

Our decision to reclassify these products is also based on a comparison of these products with two rulings issued by the Harmonized System Committee of the World Customs Organization (HSC). These two rulings from the *Compendium of Classification Opinions*, issued by and reflecting the consensus of the HSC on the classification of butterfat mixtures in the Harmonized Tariff System (HTS), are useful to illustrate this interpretation of heading 0405.

> **0405.20 1. Butterfat mixture in the form of a water-in-oil type spreadable emulsion** and used in the food industry, consisting of, by weight, 68.75% butteroil, 17% sugar, 13% water and 1.25% casein. *See also*

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[1] Milkfat and butterfat are practically synonymous and the terms are used interchangeably. The former is sourced in milk or cream, the latter in butter. Milkfat has a fat content of not less than 99.7%. The prefix 'anhydrous' is applied where the moisture content is less than 0.2%. (*See Milk and Milk Products, Technology, Chemistry and Microbiology*, Alan H. Varnam & Jane P. Sutherland, (Chapman & Hall, London: 1994), page 255.)

[2] Butteroil has a fat content of not less than 99.7%. (*See* Varnam, page 255.) Butteroil, similar to dehydrated butter, is processed by melting butter then centrifuging it to remove both water and curd. Butteroil is described as "butter which has had its water content removed." (*See Dairy Handbook and Dictionary*, J.H. Frandsen, (Nittany Printing and Publishing Co., State College, PA: 1958), page 378.)

[3] Ghee was described as "clarified and pure butter containing more than 99% by weight of butter fat, with no salts or moisture in HQ 085580 dated January 16, 1990. A relatively pure form of clarified butterfat, ghee is "butter from which the water has been driven off by heat, the salt and curd being allowed to settle and the fat filtered off." (*See* Frandsen, page 383.)

Opinion 2106.90/18.

2106.90 18. Butterfat mixture in the form of a yellowish paste and used in the food industry, consisting of, by weight, 67.5% butterfat, 14% skimmed milk and 18.5% sugar. *See also* Opinion 0405.20/1.

Note that the composition of both products is very similar. However, the product, described as a "water-in-oil spreadable emulsion," was classified in heading 0405, HTS, while the second product, described as a mixture of butterfat with other ingredients, was classified in heading 2106, HTS. The second product was not butter or a dairy spread (*i.e.*, not a spreadable water-in-oil emulsion) and was determined to be "more than" other fats and oils derived from milk, since the product contained additional, non-butterfat, ingredients.

The decision to classify the anhydrous milkfat or butteroil products identified as Confectionery AMF 95S, Confectionery AMF 95L, Salted AMF 95N, Milky AMF 95/5, and AMF-PRO 95/5 under heading 0405, HTSUS, is in conflict with the HSC rulings cited above. These anhydrous products are not "water-in-oil type spreadable emulsions" and are not butter, dairy spreads, or other fats and oils derived from milk as defined in heading 0405, HTSUS. As in Classification Opinion 2106.90/18, where the HSC classified a butterfat mixture, not believed to be a water-in-oil type emulsion, containing skim milk and sugar as additional ingredients, in heading 2106.90, the products described in NY B82737 must similarly be classified in 2106, HTSUS. These milkfat mixtures are properly classifiable under subheading 2106.90.6400 and .6600, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: Other: Other: Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4 and entered pursuant to its provisions.

The milkfat mixtures at issue here are similar to products that were classified in two other rulings issued by the Customs National Commodity Specialist Division and should be classified in the same heading of the HTSUS. NY E844547 dated August 3, 1999, classified the following four milkfat mixtures: 89% anhydrous milkfat with 11% sugar, 95% anhydrous milkfat with 5% sugar, 89% anhydrous milkfat with 11% skim milk powder, and 95% anhydrous milkfat with 5% skim milk powder, in subheadings 2106.90.6400 and .6600, depending on quota availability. In NY E89271 dated December 17, 1999, (modified by HQ 964706) two milkfat mixtures, 89% anhydrous milkfat with 11% sugar and 89% anhydrous milkfat with 11% salt, were classified in subheadings 2106.90.6400 and .6600, depending on quota availability.

Holding:

The anhydrous milkfat or butteroil products identified as Confectionery AMF 95S, Confectionery AMF 95L, Salted AMF 95N, Milky AMF 95/5, and AMF-PRO 95/5 are classified under subheading 2106.90.6400, HTSUS, which provides for: Food preparations not elsewhere specified or included: Other: Other: Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4 and entered pursuant to its provisions. If entered after the quantity limitations of the tariff rate have been reached, these products are classifiable in subheading 2106.90.6600, HTSUS, the residual subheading for the quota provisions. Further, goods which are classifiable in subheading 2106.90.6600 are subject to additional safeguard duties listed in subheadings 9904.04.50 – 9904.05.01, HTSUS.

Effect on other Rulings:

NY B82737 dated March 7, 1997, is REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A "SANTA/ SNOWMAN" LIGHT TESTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a "Santa/ Snowman" light tester.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a "Santa/Snowman" light tester, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before February 2, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to: U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record

is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) B85466, dated June 7, 1997, which pertains to the classification of the "Santa/Snowman" light tester, a device that tests the function of individual bulbs from strings of Christmas lights. NY B85466 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY B85466, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY B85466 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964627 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 15, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

June 4, 1997
CLA-2-85:RR:NC:1: 112 B85466
Category: Classification
Tariff No. 8543.89.9090

MS. LORI ALDINGER
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

Re: The tariff classification of a "Santa/Snowman Light Tester" from China.

DEAR MS. ALDINGER:

In your letter dated May 1, 1997, you requested a tariff classification ruling.

As indicated by the submitted sample, the "Santa/Snowman Light Tester", designated as Rite Aid item #960318, consists, in this instance, of a plastic representation of a Santa Clause. It is battery operated and contains a bulb tester slot located near the middle of the item. Christmas type bulbs can be checked by inserting them into the tester slot. The item also contains a button with LED which is used to indicate that the batteries are working, and a device attached to the bottom which facilitates the removal of bad bulbs.

The applicable subheading for the "Santa/Snowman Light Tester" will be 8543.89.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 3.1 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-466-5680.

ROBERT SWIERUPSKI,
Chief, Metals and Machinery Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964627 AML
Category: Classification
Tariff No. 9030.39.00

MS. LORI ALDINGER
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

Re: "Santa/Snowman" light tester.

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) B85466, issued to you by the Director, Customs National Commodity Specialist Division on June 4, 1997,

which concerned the classification of a "Santa/Snowman" light tester under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY B85466 and now believe that the classification set forth is incorrect. This letter sets forth the correct classification.

Facts:

The articles were described in NY B88262 as follows:

The "Santa/Snowman Light Tester", designated as Rite Aid item #960318, consists, in this instance, of a plastic representation of a Santa Claus. It is battery operated and contains a bulb tester slot located near the middle of the item. Christmas type bulbs can be checked by inserting them into the tester slot. The item also contains a button with LED which is used to indicate that the batteries are working, and a device attached to the bottom which facilitates the removal of bad bulbs.

Issue:

Whether the light testers are classifiable under subheading 8543.89.96, HTSUS, as other electric machines not specified or elsewhere included in Chapter 85, or under subheading 9030.39.00, HTSUS, as other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other, or under subheading 9030.89.00, HTSUS, as other instruments and apparatus for measuring or checking electrical quantities, other?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
Other machines and apparatus:
Other:
Other:
Other:
8543.89.96 Other.

* * *

9030 Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:
Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device:
9030.39.00 Other:
9030.39.00.40 For measuring or checking voltage, current or resistance:
Other instruments and apparatus:
9030.89.00 Other.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commen-

tary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8543 provides, in pertinent part, for "electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter[.]" The ENs to heading 8543, HTSUS, provide, in pertinent part, that:

> This heading covers all electrical appliances and apparatus, *not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature*, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90 [emphasis added].

Thus, if the light testers are provided for by another heading within the HTSUS, classification under heading 8543 is precluded. Further, we note that articles of Chapter 90 are excluded from classification in Chapter 85 by virtue of Note 1(m) to Section XVI.

Heading 9030 provides for "oscilloscopes, spectrum analyzers and *other* instruments and apparatus for measuring or *checking* electrical quantities...other instruments and apparatus, for measuring or *checking* voltage, current, resistance or power, without a recording device" [emphasis added]. The ENs to heading 9030 contemplate, among other things, articles that check (perceive and identify) the presence of electricity and the viability of electrical circuits. The Court in *United States v. Corning Glass Works*, 66 CCPA 25, 27, 586 F. 2d 822, 825 (1978), quoting Webster's Third New International Dictionary, 381 (1971) stated: "Check" is defined as "to inspect and ascertain the condition of esp. to determine that the condition is satisfactory: * * * investigate and ensure accuracy, authenticity, reliability, safety or satisfactory performance of * * *: to investigate and make sure about conditions or circumstances * * *." The light tester at issue checks the viability of electrical circuits in light bulbs. This function inclines us to believe that heading 9030 best describes the light testers at issue.

Heading 9030, HTSUS, refers to "other instruments and apparatus . . . for . . . checking voltage, current, resistance or power," making an enumeration of specific things followed by a general word or phrase. "The general word or phrase is held to refer things of the same kind as those specified." *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994). We find that the light testers are *ejusdem generis* with the "measuring, checking or automatically controlling instruments and apparatus, whether or not optical or electrical" described in the Section Notes, heading and EN to heading 9030. The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that "[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157.

The ENs to heading 9030 provide, in pertinent part, that:

> Some electrical measuring instruments can be used for many purposes, for example, electrical or electronic instruments known as "universal testers" (*e.g.*, multimeters) which serve for the rapid measurement of voltages (direct or alternating), currents (direct or alternating), resistances and capacitances.
>
> * * *
>
> The main types of electrical measurements are:

(I) Measurement of electric currents. This is carried out, in particular, by means of galvanometers or amperemeters (ammeters).

(II) Voltage measurement, by voltmeters, potentiometers, electrometers, etc. The electrometers used for measuring very high voltages are electrostatic; they differ from the usual type of voltmeter in that they are fitted with spheres or plates held on insulating pillars.

(III) Measurement of resistance and conductivity, by means of ohmmeters or measuring bridges, in particular.

(IV) Measurement of power by means of wattmeters.

The *McGraw-Hill Scientific and Technical Encyclopedia*, under the headings indicated below, provides the following definitions of the devices described in the EN to heading 9030:

An *ammeter* measures the flow of current by converting electrical energy to mechanical energy.

The *voltmeter* is a device that converts electrical energy to physical energy in order to measure the electrical potential in volts. Most voltmeters are classical GALVANOMETERS that have been modified to measure the potential rather than the current. If a suitable resistor is placed in the circuit in parallel with the meter, the voltage can be determined as a product of the resistance value times the current; the meter can thus be calibrated directly in volts. In order to measure the voltage of alternating current, a rectifier must be provided, which is a device that converts alternating current into direct current. Voltmeters are essential to electricians, scientists, and industrial workers. One basic meter movement is often used to measure volts, amperes, and resistance in ohms by providing suitable resistors and switches, and a small standard electrical source. Such a combination is called a multimeter or a Volt-Milliammeter (VOM).

A *galvanometer* is an instrument that measures the amount of electrical current by converting electrical energy into the physical displacement of a coil, which in turn moves a pointer or light beam. In a galvanometer, a coil of fine wire is suspended between the poles of a permanent magnet, so that when the coil is magnetized as current passes through it, the like poles of magnet and coil repel each other and cause an attached pointer to deflect across a calibrated scale. When a light beam is used instead of a pointer, a mirror is mounted on the side of the moving coil and a fixed beam of light is directed at the mirror. As the coil turns, the reflected image of the light moves along a translucent, calibrated panel. The coil may be mounted on a spindle, whose ends turn on rubies or very hard steel. The direct-current ammeter is a type of calibrated galvanometer that measures larger currents; a calibrated galvanometer may also be used as a direct-current voltmeter, which measures direct voltage using Ohm's law. Galvanometers are currently being replaced by modern digital instruments.

While certain electrical phenomena such as the photoelectric effect allow for direct measurement of an emitted electric current, other electrical measurements are performed with the aid of an external current or voltage source, so that the resistance, self-inductance, or capacitance can be determined. These measurements are in the end also based on determining the current intensity or voltage. They are performed chiefly with a WHEATSTONE BRIDGE, a circuit that requires a current source, a number of comparison resistances, and a calibrated POTENTIOMETER. The measurement is based on a null measurement of the voltage between two tapping points.

The subheadings within heading 9030 contain reference to "[o]ther instru-

ments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device, other, for measuring or checking voltage, current or resistance" – articles we find to be substantially similar to the light testers in question. Further, the ENs provide that "instruments and apparatus for measuring or checking electrical quantities may be indicating or recording types." The light tester at issue indicates whether a light bulb is functional. (*See Simmon Omega, Inc. v. United States*, 83 Cust. Ct. 14, C.D. 4815 (1979), for the fundamental longstanding tariff classification principle that Congress did not intend to foreclose the classification of future innovations and technological advancements in tariff provisions. To hold otherwise would result in the classification of any and every new product in the basket provisions of the nomenclature, a result that was specifically targeted for elimination under the HTSUS.) Accordingly, we find that the light testers under consideration are sufficiently similar to the articles provided for in heading 9030, HTSUS, as to be classifiable in that heading, and to preclude classification in heading 8543, HTSUS.

GRI 6 provides in pertinent part that "the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable."

Consideration of the subheadings within heading 9030 reveal that subheading 9030.39 best describes the articles at issue.

This determination comports with prior rulings of this office. In New York Ruling Letters (NY) 881920, dated January 25, 1993, a battery tester was classified under subheading 9030.39.0040, HTSUS; D87008, dated February 3, 1999, the circuit tester contained in an automotive repair kit was classified under subheading 9030.39.0080; E82946, dated June 17, 1999, electromagnetic compatibility (EMC) testers were classified under subheading 9030.89.00, HTSUS; F82289, dated February 11, 2000, a voltage tester was classified under subheading 9030.39.00; and in Headquarters Ruling Letter (HQ) 958898, dated May 14, 1996 a "hi test rope tester" was held to be classifiable in subheading 9030.39.00, HTSUS.

Holding:

The light testers are classifiable in subheading 9030.39.00, HTSUS, which provides for other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other.

Effect on other Rulings:

NY B85466 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF BOY'S KNIT GARMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of boy's knit garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of a boy's knit garment under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 2, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the

Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a boy's knit garment. Although in this notice, Customs is specifically referring to one ruling New York Ruling (NY) E84339, dated July 16,1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In NY E84339, Customs ruled that the subject garment, Style # NW-5114 (sizes 8-20) was properly classified under subheading 6110.30.3050, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: Other: Other: Other: Other: men's or boys'." The general column one duty rate under the 1999 tariff was 33.1 percent *ad valorem* (32.9 percent *ad valorem* under the 2000 HTSUSA). The textile category is 638. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. We have de-

termined that Style # NW-5114(sizes 8-20) is correctly classified in subheading 6101.30.2020, HTSUSA, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: Of man-made fibers: Other: Other, boys'." The general column one duty rate under the 1999 tariff was 29.1 percent *ad valorem* (28.9 percent *ad valorem* under the 2000 HTSUSA). The textile category is 634.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E84339, dated July 16, 1999, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 963439 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: December 18, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

July 16, 1999
CLA-2-61:RR:NC:TA:N3:356 E84339
Category: Classification
Tariff No. 6110.30.3050

MR. JOHN IMBRIGULIO
NORDSTROM, INC.
A/P, Import Office
1617 Sixth Avenue, Suite 1000
Seattle, WA 98101-1742

Re: The tariff classification of a boys' knit garment from Macau.

DEAR MR. IMBROGULIO:

In your letter dated June 4, 1999, you requested a tariff classification ruling. As requested, your sample will be returned.

Style NW5114 is a boys' garment constructed from 100 percent polyester, finely knit pile fabric which is napped on the inside and outside surfaces. The fabric contains more than nine stitches per two centimeters counted in the horizontal direction. Style NW5114 features a full front opening with a zip-

pered closure; a convertible collar; long sleeves with elastic cuffs; 100 percent nylon woven fabric overlays on the shoulders, the upper portion of each sleeve and the rear yoke; one horizontal zippered pocket on the left chest; two zippered slash pockets below the waist; and a straight hemmed bottom.

The applicable subheading for Style NW5114 will be 6110.30.3050, Harmonized Tariff Schedule of the United States, (HTS), which provides for: sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: men's or boys'. The duty rate will be 33.1 percent *ad valorem*.

Style NW5114 falls within textile category designation 638. Based upon international textile trade agreements, products of Macau are subject to a visa requirement and quota restraints.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter or the control number indicated above should be attached to the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Mary Ryan at 212-637-7081.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:TE 963439 ASM
Category: Classification
Tariff No. 6101.30.2020

MR. JOHN IMBROGULIO
NORDSTROM INC.
1617 Sixth Ave., Suite 1000
Seattle, WA 98101

Re: Proposed Revocation of NY E84339: Classification of boy's knit garment.

DEAR MR. IMBROGULIO:

This is in regard to New York Ruling Letter (NY) E84339, issued to you on July 16, 1999, by Customs in reply to your request for a tariff classification ruling of a boy's knit garment. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY E84339 by providing the correct classification for the merchandise. In addition, this is our response to your letter, dated September 28, 1999, requesting reconsideration of NY E83097 and NY E84339 which classified the subject boys' knit garments under the Harmonized Tariff Schedule of the United States Annotated. A sample was submitted to this office for examination.

Facts:

The rulings at issue are NY E83097, dated July 7, 1999, and NY E84339, dated July 16, 1999. These rulings involved two separate classifications for a boy's knit garment, identical in every respect, except for the size range. In NY E83097, the subject article was identified as Style # NK-5114, sizes 4-7. In NY E84339 the subject garment was identified as Style # NW-5114, sizes 8-20. The garment is a boy's jacket, constructed from 100 percent polyester, finely knit fabric that is napped on the inside and outside surfaces. The garment has the following features: a stand-up collar with nylon overlays; a full front opening with a heavy duty zippered closure; long sleeves with elasticized capping at the cuffs; a heavy duty zippered pocket on the left chest; two heavy duty zippered pockets below the waist; nylon overlays on the front and back yokes and on the outer portion of each sleeve; and a straight, hemmed bottom. The polyester fleece fabric, which completes the shell, has a dense pile fabric.

In NY E83097, the garment (NK-5114, sizes 4-7) was classified in subheading 6101.30.2020, HTSUSA, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: Of man-made fibers: Other: Other, boys'." The general column one duty rate under the 1999 tariff was 29.1 percent *ad valorem* (28.9 percent *ad valorem* under the 2000 HTSUSA). The textile category is 634.

In NY E84339, the garment (NW-5114, sizes 8-20) was classified under subheading 6110.30.3050, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: Other: Other: Other: Other: men's or boys'." The general column one duty rate under the 1999 tariff was 33.1 percent *ad valorem* (32.9 percent *ad valorem* under the 2000 HTSUSA). The textile category is 638.

You disagree with the classification of Style # NK-5114 as a boy's outerwear garment in heading 6101, HTSUSA, and assert that it should be classified the same as Style # NW-5114 because it is identical in every respect except for the size range. You further assert that the Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, C.I.E. 13/88, November 23, 1988, as well as previous binding rulings indicate that knit garments without a tightening at the wrist or waist would not be considered a jacket. Thus, it is your assertion that both Style # NK-5114 and Style # NW-5114 should be classified as "other garments" in subheading 6110.30.3050, HTSUSA.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. *See*, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The instant garment consists of an outer shell of both knit and woven fabrics. As such, GRI 2(b) states that goods consisting of more than one material

are to be classified according to GRI 3. GRI 3(a) states that the heading which provides the most specific description is to be preferred to the one that is more general. However, in this instance, when two headings each refer to only part of the materials in mixed goods, the headings are to be regarded as equally specific. Consequently, goods which are not classifiable under 3(a) are analyzed as per GRI 3(b) which directs that the goods be classified as if they consisted of the material which gives them their essential character.

As we noted in Headquarters Ruling (HQ) 958288, dated November 29, 1995, "Usually, when Customs is faced with the classification of a garment that is comprised of a woven material and knit, we refer to a set of classification guidelines set forth in Customs Headquarters Memorandum 084118 (Customs Memorandum), dated April 13, 1989" in order to determine the essential character of a garment. In this ruling, it was determined that the woven panels overlaying the knit fabric were mere decorative trim more similar to an "accessory" to the garment within the meaning of the EN to Chapter 61. The ruling further stated that if the woven panels had been viewed as an integral component of the garment, a GRI 3 analysis would be appropriate and the guidelines contained in the Customs Memorandum applied. However, as mere decorative trim, the woven panels were disregarded and the entire article was classified as a knit garment pursuant to a GRI 1 analysis. *See*, also HQ 950007, dated October 4, 1991.

In the subject case, we note that the woven fabric overlay does provide a decorative accent. However, we further note that there is a significant amount of the woven fabric used on the upper portion of the front, back, arms, and collar of the garment. Furthermore, the woven overlays are strategically placed at the neck and upper body to provide additional protection to the wearer. As such, it is our determination that the woven overlays are an integral component of the garment, a GRI 3 analysis is appropriate, and the guidelines contained in the Customs Memorandum should be applied to determine the essential character.

In determining the essential character of the subject garment which consists of both knit and woven fabrics, the Customs Memorandum has set forth the criteria for an upper body garment as follows:

> a. For upper or lower body garments, if one component exceeds 60 percent of the visible surface area, that component will determine the classification of the garment unless the other component:
>
> (1) forms the entire front of the garment; or
> (2) provides a visual and significant decorative effect (*e.g.* a substantial amount of lace); or
> (3) is over 50 percent by weight of the garment; or
> (4) is valued at more than 10 times the primary component.
>
> If no one component comprises 60 percent of the visible surface area, or if any of the above four listed conditions are present, classification will be according to GRI 3(b) or 3(c), as appropriate.

In the subject case, the polyester knit fabric appears to comprise approximately 60 percent of the visible surface area. However, the woven nylon fabric overlays do provide visual contrast to the front, back, and arms of the garment, imparting a significant decorative effect to the overall appearance of the garment. Thus, in assessing the essential character of the goods pursuant to GRI 3(b), it is our determination that the knit fabric which has been napped on both the inside and outside surfaces, gives the garment its essential character because it comprises the greatest total surface area of the article. Although the woven nylon fabric provides a fashionable accent and some additional protection to the surface area, it is the napped fabric that imparts the greatest visual impact to the garment while also conveying the important features of warmth

and a softly textured surface over the greater portion of the surface area.

Customs has previously ruled that certain knit garments that resemble jackets are properly classifiable as "sweaters", "pullovers", and "other garments" under subheading 6101.30.3050, HTSUSA. *See* HQ 956795, dated January 25, 1995; HQ 950045, dated 12/3/91; HQ 951629, dated August 21, 1992; HQ 954827, dated December 8, 1993. However, these rulings did not involve the classification of a knit garment, such as the one at issue, which combine all the following outerwear features: a heavy duty full frontal zipper, stand up collar, a heavy duty zippered pocket on the left chest, two pockets below the waist with heavy duty zipper, and long sleeves with elasticized capping at the cuffs. In particular, HQ 956795, dated January 25, 1995, best illustrates this point. HQ 956795, determined that a man's long sleeved upper body garment constructed of 100 percent knit polyester, heavily napped on both the inside and outside surfaces would otherwise have been classifiable as a jacket under subheading 6101.30.2010, HTSUSA, if it had been designed with a full frontal zipper opening. To support this statement, the ruling cited to HQ 088289, dated February 11, 1991, in which Customs distinguished between sweatshirts classifiable under heading 6110, HTSUSA, and sweatshirts with full frontal zippers held classifiable as jackets of heading 6101, HTSUSA. In classifying a long sleeve sweatshirt jacket with a full front zipper opening as a jacket of heading 6101, HTSUSA, HQ 088289, stated that "Garments with full-front zipper openings are not considered similar to sweatshirts, but are jackets."

The *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, C.I.E. 13/88, November 23, 1988 (Textile Guidelines) set forth eleven criteria by which to classify a garment as a jacket under the HTSUSA, if the result is not unreasonable. In applying these Textile Guidelines, HQ 962593, dated December 2, 1999, concluded that a garment constructed from fabric napped only on the inside, with full front zippered opening, long sleeves with rib knit cuffs, pockets below the waist, and a straight hemmed bottom was classifiable as a cardigan in heading 6110, HTSUSA. This ruling stated that, although the garment possessed three "jacket features", it was not designed as a "jacket" for use over other outer wear. The ruling further stated:

> Specifically, although we recognize that fabric weight is not an absolute indicator of a garment's status for classification purposes, it does provide some indication as to a garment's suitability for different uses. In this case, the lightweight fabric construction of the subject garment would not likely provide sufficient protection from the elements to the wearer when worn outside on cold days. Additionally, features such as pockets at the waist and a hood, are not substantive proof that a garment is designed for use as outerwear.

In the subject case, the garment possesses at least four of the eleven jacket features enumerated in the Textile Guidelines as follows: 1) pockets at or below the waist; 2) a heavy duty zipper; 3) long sleeves without cuffs; 4) an elasticized binding at the wrist. Unlike the garment in HQ 962593, the garment now in question is clearly designed for use as outerwear. The subject garment is comprised of a dense fabric that is napped on both the inside and outside surfaces suggesting that it is to be used for warmth. It is also important to note that the tightly woven nylon fabric overlays are strategically placed to offer additional protection against the elements: On the outside of the stand-up collar, extending across the shoulders, across the chest and back area of the garment, and along the outside of each sleeve from shoulder to cuff. Thus, when one considers in totality, all of these features combined, the subject garment conveys a strong overall appearance of being for use as a jacket to provide the outermost layer of warmth and protection against the elements. Thus, we believe that classification as a "jacket" under subheading 6101.30.3050, HTSUSA, would not be unreasonable in this case.

Furthermore, the classification of knit upper body garments as outerwear under heading 6101, HTSUSA, has been well established. Specifically, HQ 960251, dated April 10, 1997, is relevant to the subject case in that the garment shares many of the same features to the one now in issue. HQ 960251 involved the classification of a man's long sleeved upper body garment constructed of 100 percent finely knit polyester that has been napped on the outer surface, and designed with a full frontal zipper opening, convertible collar, elasticized capping at the cuffs, and two zippered slash pockets. In this ruling it was held that the garment was properly classified as outerwear in subheading 6101.30.2010, HTSUSA. *See*, also, HQ 085023, dated October 19, 1989; HQ 085929, dated June 1, 1990; HQ 088289, dated February 11, 1991; HQ 088720, dated June 25, 1991; and HQ 959600, dated September 12, 1997.

Finally, we note that the recently published *Apparel Terminology under the HTSUS* provides a definition for "Anoraks, windbreakers and similar articles" which states that the group includes:

> Jackets, which are designed to be worn over another garment for protection against the elements... Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although **children's garments or garments made of heavier material might not need these tightening elements."** (Emphasis supplied)

The subject article falls within this "jacket" definition because it has been designed to be worn by young children and older youths over another garment(s) for protection against the elements. While it lacks a tightening element at the bottom, it has been constructed of a dense fabric that will provide substantial warmth to the wearer as a final layer of outerwear.

In view of the foregoing, it is our determination that both the subject garments, NK-5114 (sizes 4-7) and NW-5114 (sizes 8-20) are properly classified as jackets under subheading 6101.30.2020, HTSUSA. Accordingly, it is our determination that NY E84339, dated July 16, 1999, erroneously classified the garment identified as NW-5114 (sizes 8-20), as "Sweaters, pullovers, sweatshirts, waistcoats (vest) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Men's or boys'" in subheading 6110.30.3050, HTSUSA.

Holding:

The subject merchandise identified as Style # NK-5114 (sizes 4-7) and Style # NW-5114(sizes 8-20) is correctly classified in subheading 6101.30.2020, HTSUSA, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: Of man-made fibers: Other: Other, boys'." The general column one duty rate under the 1999 tariff was 29.1 percent *ad valorem* (28.9 percent *ad valorem* under the 2000 HTSUSA). The textile category is 634.

NY E84339, dated July 15, 1999, is hereby revoked.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior

to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN MINIATURE CERAMIC URNS CONTAINING PERFUME

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters and the revocation of treatment relating to the classification of miniature ceramic urns containing perfume.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of miniature ceramic urns containing perfume under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocations was published on November 15, 2000, in Vol. 34, No. 46 of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 4, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"in-**

formed compliance" and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY 848884, dated January 30, 1990 and A89495, dated December 10, 1996, was published on November 15, 2000, in Vol. 34, No. 46 of the CUSTOMS BULLETIN. No comments were received in response to this notice. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY 848884 and A89495, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQs 964603 and 964604 (*see* the Attachments to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: December 18, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

December 18, 2000
CLA-2 RR:CR:GC 964603 AML
Category: Classification
Tariff No. 6913.90.50

MR. ROBERT C. KIRBY
437 S. E. 14th Street
Dania, FLA 33004

Re: Reconsideration of NY A89495; decorative ceramic urn containing cream perfume.

DEAR MR. KIRBY:

This is in reference to New York Ruling Letter (NY) A89495, issued to you on December 10, 1996, which concerned the classification of a decorative, ceramic urn containing cream perfume under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY A89495 and now believe that the classification set forth is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on November 15, 2000, in Vol. 34, No. 46 of the CUSTOMS BULLETIN, proposing to revoke NY A89495 and to revoke the treatment pertaining to the decorative, ceramic urn containing cream perfume. No comments were received in response to this notice.

Facts:

The decorative, ceramic urn that contains cream perfume is approximately 3" in length. The cream perfume does not contain alcohol. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek design.

Issue:

Whether the decorative, ceramic urn that contains cream perfume is classifiable as perfume under subheading 3303.00.30, HTSUS, or as a decorative ceramic article under subheading 6913.90.50, HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings

and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

3303.00	Perfumes and toilet waters:	
	Not containing alcohol:	
3303.00.20		Other.

* * *

6913	Statuettes and other ornamental ceramic articles:	
	Other:	
	Other:	
6913.90.50		Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 3303 provide, in pertinent part, as follows:

> This heading covers perfumes in liquid, cream or solid form (including sticks), and toilet waters, designed to give fragrance primarily to the human body.
>
> Perfumes and scents generally consist of essential oils, floral concretes, absolutes or mixtures of synthetic odoriferous substances, dissolved in highly concentrated alcohol. They are usually compounded with slightly perfumed adjuvants and a fixative or stabiliser.

The ENs to heading 6913 provide, in pertinent part, as follows:

> This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments (*e.g.*, garden ornaments).
>
> * * *
>
> (B) Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character, for example, trays moulded in relief so that their usefulness is virtually nullified, ornaments incorporating a purely incidental tray or container usable as a trinket dish or ashtray, miniatures having no genuine utility, value, etc.
>
> * * *
>
> (C) Articles, other than tableware and domestic articles, of the kind used for ornamenting or decorating the household, office, etc. For example, smokers ' sets, jewel cases, cachou boxes, cigarette boxes, perfume burners, ink-stands, book-ends, paperweights and similar desk furnishings and picture frames.

The miniature ceramic urn, upon importation, is *prima facie* classifiable in two headings: 3303 and 6913, HTSUS. Therefore, classification must be made pursuant to GRIs 2(b) and 3. GRI 2(b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, that:

> 3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The ceramic containers and cream perfume form a composite good made up of different components. *See* GRI 3(b) EN (IX). As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F. 3rd 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. *See also Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

We find that the essential character of the ceramic urn containing cream perfume is imparted by the ceramic urn. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek design. The ceramic urn is decorative and will likely be retained for such purposes long after the perfume is exhausted or evaporates. Therefore, the articles are classifiable in heading 6913, HTSUS, as decorative ceramic articles.

Holding:

The decorative, ceramic urn that contains cream perfume is classifiable under subheading 6913.90.50, HTSUS, as statuettes and decorative articles of ceramic, other, other, other.

Effect on other Rulings:

NY A89495 is hereby REVOKED. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

December 18, 2000
CLA-2 RR:CR:GC 964604 AML
Category: Classification
Tariff No. 6913.90.50

MS. DORTHEA WARD-SMITH
P.O. Box 1877
Boca Raton, FLA 33435

Re: Reconsideration of NY 848884; decorative ceramic urn containing cream perfume.

DEAR MS. WARD-SMITH:

This is in reference to New York Ruling Letter (NY) 848884, issued to you on January 30, 1990, which concerned the classification of a decorative, ceramic urn containing cream perfume under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY 848884 and now believe that the classification set forth is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on November 15, 2000, in Vol. 34, No. 46 of the CUSTOMS BULLETIN, proposing to revoke NY 848884 and to revoke the treatment pertaining to the decorative, ceramic urn containing cream perfume. No comments were received in response to this notice.

Facts:

The articles were described in NY 848884 as follows:

Samples of two ceramic containers filled with cream perfume were submitted with your inquiry. The cream perfume does not contain alcohol. The small ceramic jar is black with flowers imprinted on the jar. The jar measures approximately 2 inches in height and 1 1/2 inches in diameter. The jar is fitted with a lid. The large ceramic container is a round white jar with a lid. The jar measures approximately 2 1/2 inches in diameter and 1 inch in height. The lid has two human figures imprinted on the top. The containers are not the normal containers used for the cream perfume.

Issue:

Whether the decorative, ceramic urn that contains cream perfume is classifiable as perfume under subheading 3303.00.30, HTSUS, or as a decorative ceramic article under subheading 6913.90.50, HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

3303.00	Perfumes and toilet waters:
	Not containing alcohol:
3303.00.20	Other.

* * *

6913	Statuettes and other ornamental ceramic articles:
	Other:
	Other:
6913.90.50	Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 3303 provide, in pertinent part, as follows:

> This heading covers perfumes in liquid, cream or solid form (including sticks), and toilet waters, designed to give fragrance primarily to the human body.
>
> Perfumes and scents generally consist of essential oils, floral concretes, absolutes or mixtures of synthetic odoriferous substances, dissolved in highly concentrated alcohol. They are usually compounded with slightly perfumed adjuvants and a fixative or stabiliser.

The ENs to heading 6913 provide, in pertinent part, as follows:

> This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments (*e.g.*, garden ornaments).
>
> * * *
>
> (B) Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character, for example, trays moulded in relief so that their usefulness is virtually nullified, ornaments incorporating a purely incidental tray or container usable as a trinket dish or ashtray, miniatures having no genuine utility, value, etc.
>
> * * *
>
> (C) Articles, other than tableware and domestic articles, of the kind used for ornamenting or decorating the household, office, etc. For example, smokers ' sets, jewel cases, cachou boxes, cigarette boxes, perfume burners, ink-stands, book-ends, paperweights and similar desk furnishings and picture frames.

The miniature ceramic urn, upon importation, is *prima facie* classifiable in two headings: 3303 and 6913, HTSUS. Therefore, classification must be made pursuant to GRIs 2(b) and 3. GRI 2(b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, that:

> 3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The ceramic containers and cream perfume form a composite good made up of different components. *See* GRI 3(b) EN (IX). As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F. 3rd 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. *See also Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

We find that the essential character of the ceramic urn containing cream perfume is imparted by the ceramic urn. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek characters and figures. The ceramic urn is decorative and will likely be retained for such purposes long after the perfume is exhausted or evaporates. Therefore, the articles are classifiable in heading 6913, HTSUS, as decorative ceramic articles.

Holding:

The decorative, ceramic urn that contains cream perfume is classifiable under subheading 6913.90.50, HTSUS, as statuettes and decorative articles of ceramic, other, other, other.

Effect on other Rulings:

NY 848884 is hereby REVOKED. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF (+)-DI-O-P-TOLUOYL-D-TARTARIC ACID

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of the chemical compound (+)-DI-O-P-Toluoyl-D-Tartaric Acid.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the tariff classification of the chemical compound (+)-Di-O-P-Toluoyl-D-Tartaric Acid, and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on November 8, 2000, in Volume 34, Number 45, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 4, 2001.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the November 8, 2000, CUSTOMS BULLETIN, Volume 34, Number 45, proposing to revoke Customs Headquarters ruling (HQ) 960536, dated May 11, 1998, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In HQ 960536, following a Customs laboratory report that concluded that (-)-DI-O-P- Toluoyl-L-Tartaric Acid and the stereo isomer (+)-DI-O-P-Toluoyl-D-Tartaric Acid are both esters of polycarboxylic acid with alcohol function, Customs revoked New York Ruling Letter (NY) B83470, which classified (+)-Di-p-Toluoyl-l-Tartaric Acid (CAS # 32634-68-7) in subheading 2918.13.50, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [S]alts and esters of tartaric acid: [O]ther." HQ 960536, classified the product in subheading 2918.19.20, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [O]ther: [A]romatic: [O]ther: [P]roducts described in additional U.S. note 3 to section VI (*see* Attachment "A" to this document).

It is now Customs position that this substance was correctly classified in NY B83470, in subheading 2918.13.5000, HTSUS, as an ester of tartaric acid.

Customs, pursuant to section 625(c)(1), is revoking HQ 960536 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 964378, set forth as an attachment to this document. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: December 14, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT A]

December 14, 2000
CLA-2 RR:CR:GC 964378 AM
Category: Classification
Tariff No. 2918.13.50

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL
1565 Barclay Blvd.
Buffalo Grove, IL 60089

Re: HQ 964378: (-)-Dibenzoyl-L-tartaric acid anhydrous, CAS #2743-38-6 and Dibenzoyl-D-tartaric acid, CAS #1706-42-5; and HQ 960536: (+)-DI-O-P-Toluoyl-D-Tartaric Acid, CAS #32634-68-7.

DEAR MR. CHIVINI:

This is in reference to your letters dated March 1, 2000, and March 10, 2000, to the Director, National Commodity Specialist Division, New York, requesting rulings under the Harmonized Tariff Schedule of the United States, (HTSUS), of the chemical compounds Dibenzoyl-D-tartaric acid and (-)-Dibenzoyl-L-tartaric acid anhydrous, respectively. Your letters were referred to this office for reply.

In reviewing this issue, we have also reviewed the decision in Headquarters Ruling Letter (HQ) 960536 issued to you on May 11, 1998, concerning the classification, under the HTSUS, of the chemical compound (+)-DI-O-P-Toluoyl-D-Tartaric Acid. We have determined that the classification set forth in HQ 960536 for that compound is in error. This ruling revokes HQ 960536 and classifies the other similar substances, under the HTSUS, accordingly.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 960536 was published on November 8, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 45. No comments were received in response to this notice.

Facts:

The substance (+)-DI-O-P-Toluoyl-D-Tartaric Acid has the molecular formula $C_{32}H_{18}O_8$ and the CAS #32634-68-7. The substances (-)-Dibenzoyl-L-tartaric acid anhydrous and Dibenzoyl-D-tartaric acid are optical isomers with the molecular formula $C_{18}H_{14}O_8$ (-)-Dibenzoyl-L-tartaric acid is assigned CAS registry #2743-38-6 and Dibenzoyl-D-tartaric acid is assigned CAS registry #1706-42-5. All three sub-

stances are imported in bulk as a white or off white to yellowish powder. They are used as pharmaceutical intermediates.

Following Customs laboratory report 2-97-21360-001, dated March 28, 1997, that concluded that (-) -DI-O-P-toluoyl-l-tartaric acid and (+)-DI-O-P-Toluoyl-D-Tartaric Acid is an ester of a polycarboxylic acid with alcohol function, Customs revoked New York Ruling Letter (NY) B83470, dated April 11, 1997, which classified (+)-(Di)-p-toluoyl-l-tartaric acid in subheading 2918.13.5000, HTSUS, as an ester of tartaric acid.

Lab report #2-2000-20664-001, dated March 23, 2000, concluded that Dibenzoyl-D-tartaric acid is "an ester of tartaric acid, a carboxylic acid with additional oxygen function", of subheading 2918.13.50, HTSUS. Lab report #2-2000-20665-001, dated March 23, 2000, concluded that (-)-Dibenzoyl-L-tartaric acid anhydrous is also an ester of tartaric acid of subheading 2918.13.50, HTSUS.

Issue:

Whether (+)-DI-O-P-Toluoyl-D-Tartaric Acid, (-)-Dibenzoyl-L-tartaric acid anhydrous, and Dibenzoyl-D-tartaric acid are classified in subheading 2918.13.50, HTSUS, as esters of tartaric acid, or in subheading 2918.19.20, HTSUS, as other aromatic carboxylic acid.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Only heading 2918, HTSUS, is under consideration as there is no dispute that the goods are specifically described therein. Using GRI 6, the following subheadings are relevant to the classification of this product:

2918 Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:

Carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

2918.13 Salts and esters of tartaric acid:

2918.13.50 Other: [than Potassium antimony tartrate (Tartar emetic), Potassium bitartrate (Cream of tartar), and Potassium sodium tartrate (Rochelle salts)].

* * * * * * * * * * * *

2918.19 Other: [than Lactic acid, its salts and ester, Tartaric acid, Salts and esters of tartaric acid, Citric acid, Salts and esters of citric

acid, Gluconic acid, its salts and esters, Phenylglycolic acid (mandelic acid), its salts and esters]

Aromatic:

Other: [than Benzilic acid and Benzilic acid, methyl ester]

2918.19.20 Products described in additional U.S. note 3 to section VI

The Chapter Notes to Chapter 29 state in pertinent part:

5(a) The esters of acid-function organic compounds of subchapters I to VII with organic compounds of these subchapters are to be classified with that compound which is classified in the heading placed last in numerical order in these subchapters.

An ester is created when an acid reacts with an alcohol. Tartaric acid contains both an acid and alcohol functional group. To create (+)-DI-O-P-Toluoyl-D-Tartaric Acid, toluic acid reacts with the alcohol functional group of tartaric acid. Toluic acid is classifiable in heading 2916, HTSUS. Tartaric acid is classifiable in heading 2918, HTSUS. By application of Chapter note 5(a), the ester is classifiable in the later heading. An ester of tartaric acid may use either the acid or alcohol functional group to create the ester. Lab report 2-97-21360-001 seems to indicate that because the ester used the alcohol rather than the acid functional group of tartaric acid, it was not an "ester of tartaric acid", classifiable in subheading 2918.13, HTSUS, but rather an "other ester of an aromatic polycarboxylic acid" of subheading 2918.19, HTSUS.

This statement is incorrect. Esters of tartaric acid can be created through a reaction using the alcohol functional group of tartaric acid. Esters of tartaric acid are *eo nomine* provided for in subheading 2918.13, HTSUS. Stated another way, by application of GRI 6, the goods are more specifically provided for in subheading 2918.13 than in subheading 2918.19, HTSUS.

Therefore, (+)-Di-p-toluoyl-l-tartaric acid (CAS #32634-68-7) was correctly classified in NY B83470, in subheading 2918.13.50, HTSUS, the provision for "[C]arboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives: [S]alts and esters of tartaric acid: [O]ther." HQ 960536 should have followed the ruling in NY B83470 in classifying (+)-DI-O-P-Toluoyl-D-Tartaric Acid. Similarly, (-)-Dibenzoyl-L-tartaric acid anhydrous and Dibenzoyl-D-tartaric acid are also esters of tartaric acid.

Holding:

(+)-DI-O-P-Toluoyl-D-Tartaric Acid (CAS #32634-68-7), (-)-Dibenzoyl-L-tartaric acid anhydrous (CAS #2743-38-6), and Dibenzoyl-D-tartaric acid (CAS #1706-42-5) are classified in subheading 2918.13.50, HTSUS, as esters of tartaric acid.

Effect on other Rulings:

HQ 960536 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN LIQUID CRYSTAL DISPLAY (LCD) PROJECTORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of certain liquid crystal display projectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of certain liquid crystal display ("LCD") projectors under the Harmonized Tariff Schedule of the United States ("HTSUS") and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on November 15, 2000. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 4, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on November 15, 2000, proposing to revoke a ruling letter pertaining to the tariff classification of LCD projectors. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY C83603 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964605. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964605, revoking NY C83603 is set forth as an Attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: December 18, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT A]

December 18, 2000
CLA-2 RR:CR:GC 964605 GOB
Category: Classification
Tariff No. 8528.30.66

MR. DAMON V. PIKE
DELOITTE & TOUCHE LLP
191 Peachtree Street, Suite 1500
Atlanta, GA 30303-1921

Re: LCD projectors; NY C83603 revoked.

DEAR MR. PIKE:

This is with respect to New York Ruling Letter ("NY") C83603, issued to you on behalf of Digital Projection, Inc. by the Customs National Commodity Specialist Division, New York, on January 26, 1998. In that ruling, certain liquid crystal display ("LCD") projectors were classified under subheading 8471.60.30, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY E83603 was published in the CUSTOMS BULLETIN on November 15, 2000. No comments were received in response to that notice.

Facts:

The LCD projectors were described as follows in NY C83603:

> The merchandise under consideration involves LCD digital display projectors which are known as the 2v (2500 lumens), the 4dv (3500 lumens), and the 5dv (5000 lumens) LCD digital display projectors. These digital projectors are designed to convert computer or video sources to a digital format with a luminance uniformity and ANSI brightness in excess of 2500 ANSI lumens.
>
> When the source format is input via a cable connection to these LCD digital display projectors, the image content is analyzed through high rate digital sampling using a resizing engine. The engine reproduces the image content using the maximum resolution for each of the three "Digital Micromirror Devices" (DMDs); one for each of the three primary colors of red, green, and blue. Each DMD has a visual display diagonal of approximately three-quarters to one and one quarter of an inch. Next, a high powered miniature light source is focused on the three DMDs via beam forming and light splitting optics. After each DMD modulates and reflects these light sources, the three images are optically recombined and projected through a single lens to produce a stable and definitely converged full color image on the screen.
>
> The models 2v, 4dv and 5 dv digital projectors utilize varying ANSI lumens output, and feature varying digital resolution capability. The 2v (2500 lumens) and 4dv (3500 lumens) models have a maximum display resolution capability of 848 by 600 pixels. The 5dv (5000) lumens can display up to 1024 by 768 pixels. Three configurable inputs accept all major source formats from composite video through XGA.

Marketing information provided with respect to the projectors provides as follows:

> Perfectly suited for entertainment, business, education, simulation, religion, command and control or staging and rental environments ...

Technical specifications for the projectors include:

> Input Specification: 3 independently configurable inputs – selectable via remote control. BNC connectors. 525/60, 625/50, PAL, NTSC, SECAM, VGA, SVGA, XGA & MAC Auto Select.

Issue:

Are the above-described LCD projectors provided for in heading 8471, HTSUS, as automatic data processing units, or in heading 8528, HTSUS, as video projectors?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80.

The HTSUS provisions under consideration are as follows:

Heading 8471:

> Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included[.]

Heading 8528:

> Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors[.]

Legal Note 3 to Section XVI, HTSUS, provides:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The EN to Legal Note 3 to Section XVI, HTSUS (EN (VI)), provides in pertinent part:

> Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3 (c) ...

Customs has reconsidered the uses of projectors and the evidentiary requirements of Legal Note 3 to Section XVI. The courts have provided factors, which are

indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the merchandise, and recognition in the trade of such use. *See U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F. 2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Lenox Collections v. U.S.*, 19 CIT 345, 347 (1995); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

Legal Note 3 to Section XVI does not resolve the classification at issue because the projectors are composite machines and satisfactory documentary evidence has not been submitted with respect to the principal function of the projectors. As a result, we are now of the view that the projectors cannot be classified based upon GRI 1. GRI 2 is not applicable here. GRI 3 provides as follows:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (VIII) for GRI 3(b) provides:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

At GRI 3(a), neither of the two competing headings provides a more specific description than the other. Pursuant to GRI 3(b), the projectors are composite goods. There is no essential character for the projectors because both the video and automatic data processing functions are equally important. Accordingly, we proceed to GRI 3(c), *i.e.*, the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), we determine that the projectors are provided for in heading 8528, HTSUS. They are classified in subheading 8528.30.66, HTSUS as: "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Our determination is consistent with a recent decision on similar merchandise published in the World Customs Organization ("WCO") *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of a projector which received signals from an automatic

data processing machine and a video source and whose principal function could not be determined was based upon GRI 3(c). *See* Opinion No. 8528.30/1 of the WCO *Compendium of Classification Opinions*, Amending Supplement No. 24 (August 1999). As stated in T.D. 89-80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, *i.e.*, while neither legally binding nor dispositive, the they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89-80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

This determination is consistent with our determinations in HQ 964043 dated July 25, 2000, and HQ 964159 dated July 25, 2000. In those rulings we classified LCD projectors in heading 8528, HTSUS, based upon GRI 3(c) where there was no satisfactory documentary evidence with respect to the principal function of the projectors. *See also* HQ 960282 dated October 22, 1998, and HQ 960354 dated October 22, 1998, where we classified monitors in heading 8528 based upon GRI 3(c).

Holding:

The LCD projectors are provided for in heading 8528, HTSUS, and are classified in subheading 8528.30.66, HTSUS, as "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Effect on other Rulings:

NY C83603 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

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Gregory W. Carman

Judges

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Decisions of the United States Court of International Trade

(Slip Op. 00-169)

BETHLEHEM STEEL CORPORATION, INLAND STEEL COMPANY, INC., AND U.S. STEEL GROUP A UNIT OF USX CORPORATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND ALGOMA STEEL INC., GERDAU MRM STEEL, AND STELCO, INC., INTERVENOR-DEFENDANTS

Court No. 96-05-01313

(Dated December 21, 2000)

JUDGMENT

AQUILINO, *Judge:* The plaintiffs having interposed a motion pursuant to CIT Rule 56.2 for judgment upon the record compiled by the International Trade Administration, U.S. Department of Commerce ("ITA") *sub nom. Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Review*, 63 Fed.Reg. 13,815 (March 28, 1996); and the court in slip op. 00-63, 24 CIT (June 2, 2000), having granted that motion to the extent of remand to the ITA for reconsideration of Stelco Inc.'s allocation of price adjustments, the allowance of an adjustment to Gerdau MRM Steel's credit expenses, and a ministerial error in Algoma Steel Inc.'s model-match program; and the ITA having filed herein its *Final Results of Redetermination Pursuant to Court Remand* (Oct. 30, 2000), which the court has now reviewed; and neither the plaintiffs nor the intervenor-defendants having availed themselves of the opportunity to contest or otherwise comment on these remand results; Now therefore, after due deliberation, it is

ORDERED, ADJUDGED and DECREED that the ITA's *Final Results of Redetermination Pursuant to Court Remand* (Oct. 30, 2000) be, and they hereby are, affirmed.

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